United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

76-7178

UNITED STATES COURT OF APPEALS
FILED
AUG 18 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-7178

FRANKLIN SAVINGS BANK OF NEW YORK,
Plaintiff-Appellee,

—against—

GUSTAVE L. LEVY, *et al.*,
Defendants-Appellants.

B
p/s

JOINT APPENDIX
VOLUME I
Pages 1a1-607a

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
UNITED STATES DISTRICT COURT JUDGE METZNER
Metzner
Jury demand date:
~~JUDGE EDELSTEIN~~
71 CIV. 882

, C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
THE FRANKLIN SAVINGS BANK IN THE CITY OF NEW YORK, Plaintiff. -against- GUSTAVE L. LEVY, HENRY H. FOWLER, JAMES C. HEMPHILL, EDWARD A. SCHRADER, STANLEY R. MILLER, JOHN L. WEINBERG, JOHN C. WHITEHEAD, CHARLES E. SALTZMAN, HOWARD R. YOUNG, ARTHUR G. ALTSCHUL, CHARLES L. GRANNON, JAMES D. ROBERTSON, L. JAY TENENBAUM, ROBERT S. DANFORTH, RICHARD J. FAY, H. FREDERICK KRIMENDAHL, II, GEORGE E. DOTY, DONALD R. GANT, JAMES P. GORTER, PETER A. HAGER, LEWIS J. KAUFMAN, JAMES S. MARCUS, ALAN L. STEIN, J. FRED WEINTZ, JR., ROBERT B. MENSCHEL, ROBERT E. MNUCHIN, SIDNEY J. WEINBERG, JR., LEWIS M. WESTON, ROBERT G. WILSON, PETER A. LEVY, L. THOMAS MELLY, THOMAS B. WALKER, JR., GEORGE T. BOYER, MICHAEL H. COLES, JOHN C. JAMISON, RICHARD L. MENSCHEL, ROSS E. TRAPHAGEN, JR., ROBERT E. ANDERSON, JR., WALTER F. BLAINE, JOHN W. CALLAGHAN, WALTER J. CREELY, MILES J. CRUICKSHANK, ROBERT V. HORTON, RICHARD P. OAKLEY, JOHN H. RHOADES, EDITH L. SACHS as Trustee of the trust for the benefit of Howard J. Sachs under the Last Will and Testament of Harry Sachs, WALTER E. SACHS, individually and as Trustee of the trust for the benefit of Walter E. Sachs under the Last Will and Testament of Samuel Sachs, and HAROLD S. WASS, individually and doing business under the firm name and style of GOLDMAN, SACHS & CO., Defendants.	For plaintiff: THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD. 40 Wall St. N.Y.C.N.Y. 10005 (& for Miles J. Cruickwhe (& for John W. Callaghan) (Creely and Stein (& for Anderson, Blaine, For defendant: SULLIVAN & CROMWELL (for Hemphill, Kaufman, 48 Wall St. Horton, Oakley & Wass New York N.Y. 10005 AND RHOADES). ty Defts.

DATE	NAME OR RECEIPT NO.	REC.		DISB.	
3-1-71	Thacher	15	—		
3-2-71	US Fees			15	—
4/5/76	Sullivan	5	—		
4/6/76	Treas			5	—

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JUDGE EDELST

THE FRANKLIN SAVINGS BANK
IN THE CITY OF NEW YORK

VS

GUSTAVE L. LEVY, et al

71 CIV. 88

DATE	PROCEEDINGS	Date Judg
Mar.1-71	Filed complaint and issued summons.	
Mar.1-71	Filed Order appointing Norman Winstead to serve summons and complaint. Clerk.	
Mar.2-71	Filed Plaintiff's First Request for Production of Documents.	
Mar.2-71	Filed summons with affidavit of service. Served deftl Goldman, Sachs & Co. tog. with notice of assignment, to George E. Doty, general partner, on 3/1/71.	
Mar.30-71	Filed stip and order that time of defts., George E. Doty and Goldman, Sachs & Co. to Answer the complaint is extended to 4-2-71 Edelstein J.	
pr.2-71	Filed affidavit of service by Norman D. Winstead. Served summons and complaint on 4-1-71 on defts as indicated.	
pr.8-71	Filed third party complaint and issued 3rd pty. summons.	
Apr.8-71	Filed ANSWER of defts to the complaint.	S&C
pr.23-71	Filed deft response to request for production of documents. (Goldman Sachs & Co)	S&C
May 18-71	Filed summons with marshal's ret. Served Penn Central Co. by Archibald DeB Johnson on 5-5-71 Served Penn Central Transporta tion Co. by Gunter C. Holpp on 4-16-71 Served Pennsylvania Co. by Tom P. Monteverde on 5-5-71 Served Stuart T. Saunders by personally on 4-28-71 Served David C. Bevan by personally on 5-10-71 Served Jonathan O'Herron c/o Duane Morris & Heckscher by Henry Reath on 5-5-7 Served Peat, Marwick, Mitchell & Co. by Elizabeth Barton on 4-14-71	
May 27-71	Issued 2 additional summons.	
June 2-71	Filed true copy of conditional transfer order transferring the third party portion of this action to Eastern Dist. of Pennsylvania, Phila. Pa. 19107, assigned to Hon. Joseph S. Lord, III, for coordinated or consolidated pretrial proceedings, the remainder of the action remanded to S.D.N.Y.	
June 3-71	Mailed third party portion to E.D.Penna., Phila. Pa. 19107.	
Jun 18-71	Filed ANSWER of Edith L. Sachs, Trustee to complaint.	
Jun 16-71	Filed letter acknowledging receipt of transferred potion of this case by Eastern Dist. of Penna., Phila. Pa.	S&C
Jul 8-71	Filed Request to enter Default.	
Jul 13-71	Filed ANSWER of defts. James C.Hemphill, Lewis J.Kaufman, Robert V. Horton, Richard P. Oakley and Harold S. Wass to complaint.	S&
Jul 13-71	Filed ANSWER of deft. John H. Rhoades to complaint.	
Jul 13-71	Filed Affidavit in opposition to the "Request to Enter Default".	S&
Sept.7-71	Filed Certificate of Mailing complaint and additional summons, by registered mail, return receipt requested addressed to Mr. Miles J. Cruikshank, Box 524, Freeport Grand Bahamas Receipt #302162. Received acknowledgment 9-20-71 #302162	
ct.1-71	**Filed order that summons issue from this court to defts' Anderson, Blaine, Callaghan and Greely, requiring said defts' to appear and defrnd this action within 30 days after proof of service is filed with this court, and that said summons with complaint be served as indicated. Edelstein, Ch. J.** M/N	
Oct.14-71	Filed Affidavit of Norman D. Winstead, Jr.	
Oct.29-71	Filed ANSWER of deft. Alan L. Stein to complaint.	S&C
ct.29-71	Filed ANSWER of deft. Robert E. Anderson ; Walter F. Blane and Walter J.Greely to complaint.	S&C
Nov.10-71	Filed ANSWER of John W. Callaghan to complaint.	
Nov.22-71	Filed ANSWER of deft. Miles J. Cruickshank to complaint.	S&C
		S&
	Cont'd Next Page #2	

THE FRANKLIN SAVINGS BANK vs GUSTAVE L.LEVY, ET AL
IN THE CITY OF NEWYORK
71 Civ 882
Page 2
D. C. 110 Rev. Civil Docket Continuation

1a3

71 Civ 882

JUDGE METZNER

~~Judge Edelstein~~
71 Civ 882

DATE	PROCEEDINGS	Date Order Judgment No
ec.8-71	Filed Additional Summons with Marshal's ret. Served; Lewis J. Kaufman, by Molina Adela, on 5-27-71 Harold S. Wass, by on 6-17-71 Walter F. Blaine, Unable to serve on 6-4-71 James C. Hemphill, by Harold Goldman on 6-4-71 James D. Robertson on 6-7-71 James D. Gorter, by James Garter, on 6-8-71 John H. Rhoades, by Mrs. Rhodes on 6-21-71 Thomas B. Walker, Jr. by on 5-27-71 Richard P. Oakley by Riberta Oakley on 6-7-71 Robert V. Horton, by Helen Horton on 6-2-71 Walter E. Sachs, by on 5-27-71	
Dec.13-71	Filed AMENDED ANSWER of Miles J. Cruickshank to complaint.	S&C
~~May 19.72~~	~~Filed Order discontinuing action, [illegible] Tyler, J.~~	
May 25.73	Filed Order. Ordered k that the movant furnish the court with appropriate affidavits & that the Order to Show cause, together with the papers attached, etc. Ordered that all parties should be prepared to argue the motion brought on by order to show cause if this court decides that movant has demonstrated good cause in bringing on the instant matter at this late date. Edelstein Ch J.(M/N)	
Jun 4.73	Filed Memo. End. on Order to Show Cause dated 6/4/73 by Pltff. Franklin Savings Bank. Withdrawn with prejudice.	
Jun 4.73	Filed Pltff. Franklin Savings Bank OrdertoShowCauseRE: Produce & Inspection.	
Feb 26.74	Filed Stip. pursuant to rule 15(g) of the Rules of the Judicial Panel on Multidistrict Litigation,	
Mar 1.74	Filed Orderx to Show Cause. Re: Dismissal. Ret. 3/4/74.Edelstein Ch. J.	
Mar 5.74	Filed Opinion #40425. Application of Stay & Certification of denial are denied. Edelstein Ch. J. (mailed notice)	
Mar 13.74	Filed True Copy of USCA Mandate. Ordered that the said petition is granted. The district court's order dated 2/27/74 denying a stay of the non jury trial etc. is vacated. Etc. (mailed notice)	
3/25/74	Pre trial conf held Schreiber	
Jul-23.74	Filed transcript of record of proceedings, dated 2-26-74 (filed in 70 Civ 4811)	
Oct 24.74	Filed [illegible]Accordingly, the trial in this case will commence on 12/2/74. So Ordered Edelstein Ch. J. (mailed notice)	
Oct 29.74	Filed Pltffs. letter of 3/13/74 requesting permission to supplement its designations for deposition and court's exhibit '1' as identified in the minutes of the 10/24/74 conference.	
Dec 2.74	Filed Defts. Goldman Sachs & Co. Proposed Findings of Fact & Conclusions of Law.	
Dec 17.74	Filed Transcript of proceeding dtd. 10/24/74.	
02-05-75	Filed notice of reassignment to Judge Metzner.	
01-29-75	Filed true copy of USCA order -- having considered the petition of Goldman Sachs & Co. and its general partners for a writ of mandamus directing Ch.J. to stay the trial, it is ordered that the petition is hereby granted. (filed in 70 CIV 4811 DNE)	
04-28-75	PRE-TRIAL CONFERENCE HELD BY Mag Schreiber	
05-20-75	Filed consent pre-trial order -- Metzner, J.	(CMM)
05-29-75	Filed defts' trial memorandum on jurisdictional points.	
05-29-75	Filed defts' trial memorandum.	
05-29-75	Filed defts' proposed findings of fact and conclusions of law.	
06-02-75	Non-Jury trial begun before Judge Metzner.	
06-03-75	Trial continued	
06-04-75	Trial continued.	
06-05-75	Trial continued.	

CONTINUED OVER

FRANKLIN SAVINGS BANK V. GUSTAVE LEVY 71 Civ. 882 METZNER, J.

DATE	PROCEEDINGS	Date Or Judgment
06-17-75	Trialcontinued.	
06-09-75	Trial continued.	
06-10-75	Trial continued.	
06-11-75	Trial continued.	
06-12-75	Trial continued and concluded - decision reserved.	
06-17-75	Filed pltfs' reply to defts' additional objections to pltf's deposition designations.	
08-06-75	Filed Transcript of record of proceedings, dated June 2, 3, 4, 5, 6, 1975	
08-06-75	Filed Transcript of record of proceedings, dated June 9, 10, 11, 12, 1975	
08-25-75	Filed defendants post trial memorandum on jurisdictional points.	
08-25-75	Filed defendants post trial memorandum.	
08-26-75	Filed plaintiff's post trial memorandum	
09-09-75	Filed defts. reply memorandum.	
09-08-75	Filed pltfs. reply memorandum.	
12-29-75	Filed OPINION #43613...Plaintiffs common law action for fraud and claim for relief under Martin Act are dismissed. Judgment in the sum of $500,000, with interest and costs, shall be entered in favor of plaintiff. So ordered. -- Metzner, J. m/n	
01-08-76	Filed pltf's proposed findings of fact and conclusions of law.	
01-08-76	Filed defendants' objections to pltf's deposition designations.	
01-08-76	Filed defendants' additional objections to pltf's designations.	
01-13-76	Filed JUDGMENT AND ORDER #76,040 that plaintiff recover of the deft. Goldman Sachs & Co., a partnership $487,958.33 with acuumulated interest in the sum of $188.719.54 as indicated herein. Costs to be taxed by the Clerk. Plaintiff to have execution, except that such execution is stayed through January 30, 1976. -- Metzner, J. Judgment entered - Clerk.	
01-23-76	Filed defendants ~~aff~~ motion to amend judgment.	
01-23-76	Filed defendants memorandum in support of motion to amend judgment.	
01-20-76	Filed Bill of Costs on judgment #76,040 taxed in the sum of $4,269.37 in favor of plaintiff, as against all defendants and added to the judgment.	
02-02-76	Filed pltf's memorandum in opposition to defts' motion pursuant to Rules 52(b) and 59 (a) Fed. Rules of C. Procedure.	
01-30-76	Filed stipulation and order in re funds as indicated until courts decision on motion to amend judgment, -- Ward, J. (Part I)	
03-08-76	Filed memo endorsed on motion filed 1-23-76: After reviewing the record and the papers submitted on the motion, the motion is denied. So ordered. -- Metzner, J. m/n	
04-05-76	Filed defts notice of appeal to the USCA for the 2nd Circuit from denial of defendants motion pursuant to Rule 52(b) - copy mailed to Thacher, Proffitt & Wood, Esqs.	
06-12-76	Filed plaintiff's pre-trial memo.	
05-18-76	Filed stipulation re: inclusion of true copies or certain missing documents to U.S.C.A	
05-18-76	Filed stipulation re: inclusion of certain documents as part of record of appeal.	
05-18-76	Filed stipulation designating exhibits to U.S.C.A.	
05-18-76	Filed stipulation deferring the submission of exhibits to U.S.C.A. until Aug. 18-76.	
05-18-76	Filed notice that record on appeal has been certified and transmitted to the USCA.	
06-24-76	Filed pltfs pre-trial memorandum.	

TRIAL TRANSCRIPT: TESTIMONY,

JUNE 2, TO JUNE 11, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

FRANKLIN SAVINGS BANK OF NEW YORK,
Plaintiff,

-against-

GUSTAVE L. LEVY, et al.,
Defendant.

---------------------------------------x

71 Civ. 882

Before: HON. CHARLES M. METZNER, D.J.

New York, June 2, 1975;
10.00 A.M.

APPEARANCES:

THACHER, PROFFITT & WOOD, ESQS.,
Attorneys for Plaintiff;
BY: Robert S. Stitt, Esq.,
George W. Taliaferro, Jr., Esq.,
of Counsel.

SULLIVAN & CROMWELL, ESQS.,
Attorneys for Defendants;
BY: William Piel, Jr., Esq.,
Philip L. Graham, Jr., Esq.,
Michael M. Maney, Esq.,
Charles E. Dorkey, III, Esq.,
of Counsel.

- - -

THE CLERK: Franklin Savings Bank of New York vs. Gustave L. Levy, et al. Plaintiff ready?

MR. STITT: Plaintiff is ready.

THE CLERK: Defendants ready?

MR. PIEL: Defendant is ready.

THE COURT: We will sit from 10 to 12.30 without a morning recess. There will be no afternoon session. Put your first witness on.

MR. PIEL: If your Honor please, before we begin, may I present to the Court my associate, Charles E. Dorkey, III, who is a member in good standing of the Pennsylvania Bar, awaiting admission to the New York Bar, and I respectfully move his admission to this court for the purposes of this cause.

THE COURT: The application is granted.

MR. PIEL: Thank you, your Honor.

MR. STITT: Your Honor, perhaps before I call my first witness I might call attention to a few preliminary matters which might expedite the trial.

The defendants have proposed certain changes in the pretrial order and the stipulations. I have examined them over the weekend. I don't detect any material change, and I would think that could be done without objection or further word on my part.

THE COURT: I have here a document called the revised pretrial order. Are these suggested amendments to that document?

MR. GRAHAM: Your Honor, we have several substitute pages which we would simply like to put in that document in place of several draft pages which were put in by error.

MR. STITT: Second, your Honor, the defendants have notified me late last week that they are not going to call Mr. Bevan, I received this information I think Saturday afternoon, and they have designated certain portions of his pretrial testimony. I will, of course, designate certain counter portions.

I would also reserve the right to review any testimony that he may have given in the Welch case as well.

Second, an error of my own, in the plaintiff's proposed findings at page 34, paragraph 10, I was off by one day on a telephone call from Mr. Wilson to Mr. Levy. It should read February 4 instead of February 5.

THE COURT: What page?

MR. STITT: That would be page 10, paragraph 34, first line.

THE COURT: You have "On the night of February 4."

MR. STITT: That should be the 4th, yes.

Second, in regard to the designations of the pretrial Welch and SEC testimony, I would call attention to an additional two lines of testimony by Mr. Weinberg, the plaintiff has designated page 14, and in response to some subsequent designations by defendant additional designations by the plaintiff of Mr. Levy's testimony, I believe the pages are 187, 198 and 203 -- in any event, they are marked with blue pencil and the defendants' designations have been marked with green pencil.

Therefore, I would ask that the designations of the plaintiff of the pretrial Welch and SEC testimony set forth at pages 17 through 53-B in the pretrial order be considered as offered, and I would think for the sake of good order that the counter designations of the defendants as set forth at pages 54 to 68 of the pretrial order and as we have marked with our respective colored pencils be deemed offered to the Court.

MR. PIEL: If your Honor please, I understand from the remarks that Mr. Sitt has just made that he is now offering in evidence those portions of the transcript designations --

THE COURT: I gather he is merely adding to the designations in the pretrial order.

MR. STITT: At this point I am merely offering those designations which I understood my adversary would be bringing with him this morning.

MR. PIEL: We have the depositions, your Honor. They have been marked with a blue scoring to show what Mr. Stitt designates for reading, green scoring --

THE COURT: I am misled. I thought Mr. Stitt was still on some housekeeping matters, but if he is starting the trial, then I am ready to start the trial. He didn't draw a line for me. He started out by saying he had some housekeeping matters, and I thought he was still talking about housekeeping matters.

MR. STITT: I apologize.

MR. PIEL: He started that way, but I sensed it merged into a wider intention.

THE COURT: I am glad I have you around because I'd still be on housekeeping matters. Are we starting the trial?

MR. STITT: Yes, your Honor.

THE COURT: What are you offering?

MR. STITT: I offer, most respectfully, your Honor, the designations of the plaintiff with the additions that I have just mentioned.

THE COURT: You are offering the deposition of whom?

MR. STITT: I am offering the depositions of the following witnesses as set forth in the pretrial order commencing at page 17, Gustave L. Levy as testified before trial in the Penn Central Commercial Paper case litigation, the consolidated discovery, the portions which have now been designated in blue pencil, and these are those that I designated at pages 17 through 21 of the pretrial order.

THE COURT: Wait. You don't have to do that. All I need to know is the name of the person whose deposition you are offering. The pretrial order tells me what I have to read. Isn't that correct?

MR. PIEL: That's correct.

THE COURT: Just give me the name of the person, that's all.

MR. STITT: John L. Weinberg.

THE COURT: John L. Weinberg is the first one; is that right?

MR. STITT: No. Gustave L. Levy is the first. Robert G. Wilson, Paul S. Weiss, George M. Van Cleave, Matthew Tolan, Roger M.Lynch, Jack Vogel, Michael L. Evans, Robert L. Hoffman, Robert F. Kaufman, Michael E. Bruno, II, and there is some testimony given before the Securities and Exchange Commission, Robert G. Wilson, Gustave L. Levy, and some testimony given in the Welch trial, Robert G. Wilson, Jack Vogel and Gustave L. Levy.

THE COURT: As I understand it, the portions of the depositions, the SEC testimony and the Welch trial testimony are designated in the pretrial order to which you have added this one and several other designations; is that correct?

MR. STITT: Yes, sir.

MR. PIEL: If your Honor please, at this time the defendant offers as counter designations to be read in order to give the testimony of each of those witnesses fair context those portions of the transcripts of those depositions which are listed at pages 54 to 68 of thepretrial order.

If your Honor please, when the pretrial order was originally entered into in the long history of this litigation we had reserved objections for the trial. We mentioned that to your Honor at a pretrial conference. Your Honor directed that our objections to deposition reading should be presented in writing at the time of trial. We have done that, your Honor.

In each one of these transcripts that will be delivered to your Honor, where the blue scoring of plaintiff's designations occurs and we have an objection, there is a red scoring next to it with a number that refers your Honor to a memorandum of objections to plaintiff's deposition designations, which I would like to submit to the Court.

THE COURT: All right. I gather the blue scoring is the plaintiff's designation, the green scoring is the defendants' designation and the red scoring is objections?

MR. PIEL: That's right, your Honor.

MR.STITT: I might mention, your Honor, that the plaintiff has not bothered to list specific objections. The objections that we would have would go to relevancy for the very most part, but we consent that the Court read and evaluate this testimony.

MR. PIEL: May I submit this, your Honor? Need it be marked as an exhibit or may I just submit the memorandum of objections?

THE COURT: Now you.are going to hand up to me the depositions?

MR. PIEL: Yes, your Honor.

MR. STITT: Your Honor, I would now like to offer on behalf of the plaintiff exhibits which have been designated as plaintiff's exhibits in the pretrial order at pages 4-H through 14, and I do have a set of extra copies which I have made for the convenience of the Court. It may be of some assistance in following the testimony.

THE COURT: Any objection to those exhibits?

MR. PIEL: Yes, your Honor.

MR. STITT: Your Honor, there will be objections. I would intend now to make my offer, and I am going to proceed by several different groups.

The first group, of course, would be those exhibits to which the defendants have interposed no objection, et cetera. I think this would be the most expeditious way of handling the situation. The first group that we would now offer are those exhibits to which the defendants have made no objection in the pretrial order, and these are numbers Plaintiff's Exhibits F-21, 27 --

THE COURT: Wait a second. You have given me these in order. Now I have to pick them out; is that right? I have to go through this pile and pick out the exhibit?

MR. STITT: I shouldn't think that would be necessary at this time, your Honor.

THE COURT: How can I rule on the objection unless I see the document in front of me?

MR. STITT: The first group, I don't believe there will be any objection.

MR. PIEL: I beg to differ with Mr. Stitt, your Honor. In the pretrial order, if your Honor please, at page 15, setting forth defendants' objections to plaintiff's proposed trial exhibits, we listed objections essentially that were on grounds of competency. Objections on grounds of relevance and materiality will be reserved for the trial, so they were not asserted in the order.

The exhibits which Mr. Stitt was about to proffer are still subject in many instances to objections of relevance. One of the basic ones, for example, is that he is offering documents that postdate the plaintiff's purchase.

This is a suit brought under the Securities Law alleging violations of 12(2) of the Securities Act and 10(b) of the Exchange Act on account of alleged misstatements or failures to state material facts necessary to make the facts stated not misleading in connection with the purchase in interstate commerce of a commercial paper promissory note. Therefore, the curtain comes down when the transaction is completed.

Post-transaction evidence of what Goldman, Sachs knew or learned or did or did not communicate allegedly to the plaintiff becomes wholly irrelevant. We are laboring in this case under the problem that discovery was consolidated for the sake of about 40 cases that were consolidated for pretrial purposes. Therefore, of course, because the testimony was being taken for the purposes of every case, it ranged over the whole time period embracing any purchase.

We submit that so far as concerns the purchase by Franklin Savings Bank on March 16, 1970, the curtain comes down. That's an example of the basic objection of relevance that we have here. Therefore, although these objections were not articulated in the pretrial order for the reason that we felt in many cases the Court could not pass on the objection of their relevance until Mr. Stitt stated the purpose of his proffer, they weren't sought to be detailed.

There is another general generic objection on relevance here, or rather a hearsay objection that floats through this thing. There are many exhibits to which we don't object to their being offered for the purpose of showing what Goldman, Sachs heard or was told by someone. But we ask for a limiting ruling on those, that it excludes from the record the receipt of those documents as evidence of the truth of underlying assertions involved in the secondary hearsay of the statements to go Goldman, Sachs.

THE COURT: You have such a ruling. Now I suppose you better get specific.

MR. PIEL: I would think that that is necessary in order for us to consider whether to press the relevance objection.

THE COURT: Then you better let me know which ones you are referring to.

MR. STITT: Your Honor, the first group, do I understand that the Court wants to make rulings now on relevance?

THE COURT: Obviously. When do you expect me to make them?

MR. STITT: I didn't know whether the Court might choose to reserve on that.

THE COURT: After I see what the problem is I might reserve. Right now I am ready to rule.

MR. STITT: Your Honor, as Plaintiff's Exhibit 1 we would offer a --

THE COURT: Wait. Not "as Plaintiff's Exhibit 1."

MR. STITT: I will offer F-1. I will take them now chronologically. I thought we could save time by grouping them, but I think that might be more confusing now.

THE COURT: Any objection to F-1?

MR. PIEL: Your Honor has taken care of that by the limiting ruling.

MR. STITT: Your Honor, I am not completely aware of the limiting ruling. This is a memorandum prepared in the usual course of business by the vice-president of Goldman, Sachs, Mr. Vogel, whose deposition showed him to be the vice-president in charge of the credit department of the commercial paper department, it was made in the usual course of business.

I believe that this would constitute a business record prepared in the usual course without a doubt under the shopbook rule. I also believe it qualifies as an admission by the defendant.

THE COURT: You don't want me to assume the truth of what this Mr. Vogel was told, do you? You are not offering it for that, are you? If you are, I am sustaining Mr. Piel's objection.

MR. STITT: I am offering it as a contemporaneous recollection of his conversation --

THE COURT: What was told to him, that doesn't prove the truth of the statement, and Mr. Piel objects to that. I sustain his objection.

MR. STITT: Then I think we can proceed. Second, I offer Exhibit 2 --

THE COURT: F-2?

MR. STITT: F-2, a blue sheet of Febrary 5, 1970, on Penn Central by Mr. Wison, the partner in charge of the credit department.

THE COURT: All you have to do is offer it by number. I will ask Mr. Piel if he objects.

MR. PIEL: Your Honor, on Exhibits 2, 3 and 4 we have no objection except the one your Honor has ruled on, which is merely limiting objection.

THE COURT: All right.

MR. PIEL: For purposes of information or notice or knowledge of Goldman, Sachs, no objection.

THE COURT: 2, 3 and 4 are in, subject to the limiting ruling.

xx (Plaintiff's Exhibits F-2, F-3 and F-4 were received in evidence.)

MR. STITT: Your Honor, I offer Exhibit 5, which is another blue sheet by Mr. Wilson. This is under date of February 23, 1970. I appreciate that this --

THE COURT: Pardon me, Mr. Stitt. We will go a little faster if you just offer it. "I offer Exhibit F-5." I will turn to Mr. Piel and ask him if he has any objection.

MR. PIEL: I have an objection to this one, your Honor. It is a post-transaction communication, March 23, 1970, referring to information or alleged information heard by Goldman, Sachs on that day, which was a week after the purchase.

I therefore say it is irrelevant and potentially prejudicial and should therefore be excluded in its entirety.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, this document contains what we contend is material inside information which Goldman, Sachs in exercise of reasonable care could and should have known by March 16 and demonstrates the materiality of it, namely the first sentence, "Have talked at length with Mr. O'Herron today. With some reluctance he told me that the first-quarter figures will look terrible."

More importantly, I draw your Honor's attention to a statement by Mr. Wilson in the middle of the paragraph beginning with the word "regarding" and it states this:

> "Regarding the amount of Penn Central Transportation's commercial paper, Goldman, Sachs & Co. was prepared to inventory at any one time, his recollection," that is Mr. O'Herron's, " of the February 6 luncheon was that no decision had been reached and that both the $5,000,000 and $10,000,000 figures were still under consideration. I told him that was not my understanding and that, in fact, Goldman, Sachs & Co. felt that a $5,000,000 ceiling was appropriate until such time as they obtained 100 per cent line coverage, completed some of these

long-term financings and started to reduce the operating losses."

3 I say that this should be received as Mr. Wilson's understanding as to what was reflected in discussions which he attended --

THE COURT: Do you have any objection to that portion?

MR. PIEL: Yes, your Honor, because those discussions are the subject of Exhibits 2 and 3 and are described therein. What people talked about and characterized later on I say to your Honor is not relevant --

THE COURT: I will let that portion in.

MR. PIEL: That's that second portion?

THE COURT: That's right.

(Plaintiff's Exhibit F-5 was received in evidence.)

MR. STITT: Exhibit 6 is offered by the plaintiff.

MR. PIEL: Only the limiting objection, your Honor.

MR. STITT: Exhibit 7 is offered by the plaintiff.

MR. PIEL: May I save time by saying that 7, 8, 9, 10, 11, 12, 13 and 14 are objected to only for purposes of obtaining the limiting ruling.

THE COURT: Same ruling.

(Plaintiff's Exhibits F-6 through F-14, inclusive, were received in evidence.)

MR. STITT: Exhibit F-15 is offered by plaintiff.

MR. PIEL: We have an objection here, your Honor. This is totally irrelevant because it refers only to discussion between a finance -- a corporate finance department representative of the firm who never dealt with Franklin or never served the New York area and did not sell commercial paper and a wholly unrelated noteholder. It does not tend to show in any way anything about communications to the plaintiff, Franklin Savings Bank.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, this shows evidence which the Court should receive certainly on the issue of warranties and representations. In this document we have Goldman, Sachs assuring an investor of the quality of the commercial paper offered by Goldman, Sachs, and since that may turn out to be an issue in the case, I think plaintiff is entitled to have this document prepared in the usual course of business by Goldman, Sachs received in evidence.

THE COURT: What was the date of this note? The issue here.

MR. STITT: The Franklin note was purchased on March 16, 1970. This document, F-15, is a memorandum dated October 24, 1969.

THE COURT: Objection sustained.

MR. STITT: Plaintiff offers Exhibit 17.

THE COURT: What about 16?

MR. STITT: Your Honor, I am terribly sorry. Offered is made of Exhibit 16.

MR. PIEL: No objection to 16, 17, 18, 19, 20, except the objection to request the limiting ruling.

THE COURT: Same ruling.

xx (Plaintiff's Exhibits F-16 through F-20, inclusive, were received in evidence.)

MR. PIEL: There is no objection to Exhibit 21, there is no objection to Exhibits 22 and 23, except to request the limiting ruling.

xx (Plaintiff's Exhibits F-21 through F-23, inclusive, were received in evidence.)

MR. STITT: Offer is made of Exhibit F-24.

MR. PIEL: With respect to Exhibit F-24, your Honor, we have again the basic objection that this is a post-purchase communication dealing with an analysis of financial data, made after the purchase and not available at the time of the Franklin purchase.

MR. STITT: Your Honor, this is a report on Penn Central, prepared by Mr. Haufman, under date of May 9, 1970. It is being offered for the principal purpose of demonstrating the material of information set forth at page 5 thereof which refers to an ICC order of November 6, 1969, and the ICC's notation of some concern over Penn Central's use of commercial paper, traditionally used for short-term current purposes, as a substitute for long-term financing.

This was information that Goldman, Sachs had as early as November, 1969,and the fact that this information is now included in a memorandum prepared by Goldman, Sachs' analyst on May 9 would seem to support our claim that this was material information.

THE COURT: Why shouldn't the ICC order come in?

MR. PIEL: Your Honor, that is being offered by Mr. Stitt as a separate exhibit, Exhibit 48, so he does not need to import it by means of this document.

THE COURT: I will receive Exhibit 24, aside from page 5.

MR. STITT: As I say, your Honor, it is not just the ICC's statement. It is Goldman, Sachs' inclusion of it in a memorandum prepared by oneof its analysts which would support materiality.

THE COURT: I would assume Goldman, Sachs would not deny it was not familiar with an ICC order in the Penn Central matter.

MR. PIEL: Of course we will not deny that. We knew it as of an earlier time.

THE COURT: Objection sustained.

MR. STITT: Your Honor, I don't wish to prolong it, but I do believe it constitutes an admission by Goldman, Sachs on the point of materiality.

THE COURT: I assume, and Mr. Piel affirms my assumption, they are not going to deny what the ICC did in relation to something in which they were deeply involved. They would be crazy, I would think. Objection sustained.

MR. STITT: Your Honor, offer is made of Exhibit F-25.

MR. PIEL: Your Honor, F-25 is objected to as a post-purchase by two months, communication with a third party, and it is totally irrelevant to the state of facts on the date of purchase by Franklin Savings Bank.

THE COURT: Mr. Stitt?

MR. STITT: If your Honor please, this particular document is, we suggest, material to our claim under Rule 10(b)(5) of the 1934 Act and the Martin Act of a scheme and reckless conduct by Goldman, Sachs.

Here we have Goldman, Sachs' vice-president, Mr. Vogel, assuring Mr. Merker of the National Credit Office, the independent rating agency, whose prime rating was a legal requirement of Franklin's purchase, that Goldman, Sachs on May 18 still felt the same way about Penn Central, when in fact between the conversation that Mr. Vogel had had with a representative of NCO on February 5 and May 18, Goldman, Sachs had taken some very significant steps with respect to its inventory of Penn Central notes, arranging for a buy-back of a substantial portion of it, restricting the ceiling.

As a matter of fact, after April 7 Goldman, Sachs carried no inventory at all. They had requested Penn Central to increase its bank loans from 50 to 100 per cent. They had told Penn Central that until they got these additional bank loans and turned around these losses and arranged for some long-term financings, they would not change their position on the inventory.

This would indicate that Goldman, Sachs, which we contend withheld material information from Franklin, was doing the same thing with NCO.

THE COURT: Objection sustained.

MR. STITT: Offer is made of Exhibit 26.

MR. PIEL: No objection, except to request the limiting ruling.

THE COURT: Granted.

xx (Plaintiff's Exhibit F-26 was received in evidence.)

MR. PIEL: There is no objection to 27, there is no objection to 28 or 29, except to request the limiting ruling.

THE COURT: For 27, 28 and 29?

MR. PIEL: No, 27, no objection.

x (Plaintiff's Exhibits F-27 was received in evidence.)

MR. PIEL: 28 and 29, limiting ruling.

THE COURT: Granted.

x (Plaintiff's Exhibits F-28 and F-29 were received in evidence.)

MR. STITT: Offer is made of Exhibit F-30.

MR. PIEL: Exhibit 30 is objected to, your Honor, on the ground of referring to an announcement by Penn Central after the date of Franklin's and being a communication a month after the Franklin purchase, it is irrelevant.

MR. STITT: If your Honor please, I would make a statement along the lines that I made before, the fact that Goldman, Sachs got out a green sheet in April, admittedly after Franklin's purchase, confirming the materiality of the first-quarter earnings. The green sheet deals with their first-quarter losses. It confirms the materiality of those losses.

4

We say that Goldman, Sachs could have learned in exercise of reasonable care that Penn Central was going to have losses of this magnitude before the paper was sold to Franklin.

THE COURT: Objection sustained.

MR. STITT: Offer is made of Exhibit F-31.

MR. PIEL: If your Honor please, this we object to as irrelevant, since to have any relevancy it would require evidence that this pamphlet was given to Franklin Savings or used in connection with conversations with Franklin Savings, and there is no such evidence and it is contrary to the fact.

THE COURT: What is contrary to fact?

MR. PIEL: That this document had any use in connection with Franklin Savings, that they saw it,relied on it, that it was a communication to them.

THE COURT: I can't even read the first couple of pages on here. Can you read this?

MR. STITT: Your Honor, the first two pages do constitute a very unsatisfactory Xerox reproduction. I can't say that the other copy that Mr. Taliaferro has is much better. I do believe that the material portions are reproduced under better quality, and I would not even ask --

THE COURT: What is this document? I can't tell from looking at it what it is.

MR. PIEL: May I offer your Honor the only known original copy of it?

THE COURT: You better keep it because in this courthouse things aren't kept.

MR. STITT: Exhibit 31 is a document to which the defendants did not object in the pretrial --

THE COURT: What is it?

MR. STITT: It is sales literature entitled --

THE COURT: What?

MR. STITT: It is a booklet prepared by Goldman, Sachs. I would say it would come under the heading of sales literature or a sales brochure, it is a record prepared by Goldman, Sachs in the course of its business. It contains representations by Goldman, Sachs concerning its experience and expertise in the handling of commercial paper.

THE COURT: I come back to my question. What is it? It is a booklet prepared by Goldman, Sachs. Does it have a title?

MR. STITT: Yes, sir.

THE COURT: What is it? I am trying to make a note as to what I have before me.

MR. STITT: It is entitled "The People Of Goldman, Sachs," and that appears on the first page or the frontispiece.

THE COURT: What is your objection to this?

MR. PIEL: My objection is essentially, your Honor, cluttering the record with irrelevancies. These were not any representations made to the Franklin Savings Bank. It is a piece of institutional advertising. It has no relation to the transaction with Franklin Savings Bank.

THE COURT: What is the date of the document?

MR. PIEL: I don't find any date, your Honor. We have no evidence about it.

THE COURT: When do you claim it was issued, Mr. Stitt?

MR. STITT: Your Honor, I had been under the impression that this was prepared prior to Franklin establishing its relationship with Goldman, Sachs. Mr. Bock will testify that we did receive correspondence and brochures, at least one of which he can identify. It will not be this exhibit, but we say that this is something that the Court is entitled to consider showing Goldman, Sachs' holding itself out to the public generally --

THE COURT: Objection sustained.

MR. STITT: Exhibit F-32 is offered.

MR. PIEL: 32 is the same kind of a problem, your Honor. It is another relevancy objection. It is a brochure about commercial paper generally, "An Attractive Short-Term Investment," is the title.

Unless Mr. Bock will testify that this was represented to him and he read it and relied on it, it is irrelevant.

THE COURT: Will Mr. Bock so testify?

MR. STITT: Mr. Bock will testify that this brochure was received by him --

THE COURT: This one?

MR. STITT: Yes, sir.

THE COURT: I will take it subject to connection.

(Plaintiff's Exhibit F-32 was received in evidence.)

MR. STITT: Offer is made of Exhibit F-33.

MR. PIEL: We have an objection here of authenticity. This was not produced by us from our files. No one in Goldman, Sachs had any knowledge of it. It was produced by one of the other plaintiffs in St. Louis, Missouri, in connection with pretrial discovery, not by Goldman, Sachs.

We have no authenticating information about it as to date, purpose, authority of the person preparing it, or the like.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, I had been under the impression this was a document that emanated from Goldman, Sachs' files, as indicated by the letterhead of their St. Louis office.

THE COURT: They deny it. Objection sustained.

MR. STITT: Offer is made of Exhibit F-34.

MR. PIEL: This is another undated pamphlet, your Honor, it is a reprint of -- here it is. We have the copyright, 1939 and 1950, by Prentice-Hall shown on it. We concede that Goldman, Sachs at one point -- it's name is on the bottom, reprinted with permission, a chapter called "Open Market Commercial Paper," from a book called "Practical Bank Credit" by Prochnow and Foulke, but absent any evidence that Goldman, Sachs gave this to Mr. Bock or Franklin Savings to induce the transaction, it is totally irrelevant.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, as I stated before, I cannot represent that Franklin Savings Bank received this from Goldman, Sachs, but I do believe it is admissible as a representation by Goldman, Sachs concerning the safety of commercial paper as an investment. It is a Goldman, Sachs publication, as clearly appears on the second and third pages of the exhibit.

I would think I am entitled to offer it as an admission. It comes from their files. It was produced during pretrial discovery.

THE COURT: That doesn't make it admissible, Mr. Stitt, merely because in a reply to a dragnet subpoena everything comes in in a case like this. You asked for it. This is dated, as I can see it, in 1939 and 1950.

MR. STITT: Yes.

THE COURT: Objection sustained.

MR. STITT: Offer is made of Exhibit F-35.

MR. PIEL: This, your Honor, is some observations by a man named Peter Fisher who worked in the corporate finance department of Goldman, Sachs & Co., not in the commercial paper department. It appears to be undated.

MR. STITT: I draw your attention to the upper righthand corner.

MR. PIEL: I beg your pardon. You will have to help me out. I can't make anything out.

MR. STITT: I thought there is a date of 1967 in the upper righthand corner.

MR. PIEL: There is no way of telling --

THE COURT: The copy I have says date questionmark. I don't know who put that in.

MR. STITT: There is some handwritten material on the second page, which has a reference to 1967, your Honor.

THE COURT: Objection sustained.

MR. STITT: Your Honor, I ask that this document be received and the Court reconsider its ruling. It contains admissions by a vice-president of Goldman, Sachs, stating that under the 1933 Act it is intended that commercial paper be used for current transactions. At the third page it has in paragraph E a statement concerning the philosoph of Goldman, Sachs' inventory, which reads in short, "Goldman, Sachs & Co. is issuer oriented and conservative. Goldman, Sachs & Co. purchases for inventory and assumes the market risk" --

THE COURT: It is 1967, at best, isn't it? Objection sustained. Next one.

MR. STITT: Offer is made of Exhbit F-36.

THE COURT: Any objection?

MR. PIEL: This is a Goldman, Sachs brochure again, your Honor, and our objection is that there is no evidence that it was any part of a communication to or inducement to Franklin Savings Bank.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, my statement would be the same as before, and I assume your Honor would make the same ruling.

THE COURT: Same ruling.

MR. PIEL: May I just add that from its nature it is obvious that it is given to borrowers, not to investors.

THE COURT: I sustained the objection.

MR. PIEL: Thank you.

THE COURT: Quit when you are ahead.

MR. STITT: Your Honor, offer is made of Exhibit F-37.

THE COURT: Any objection, Mr. Piel?

MR. PIEL: Yes, your Honor. One problem we have with this document is we can't make it out. It would require a witness to tell us what it meant.

We concede that it came from a file folder in the Philadelphia office of Goldman, Sachs. It appears to be somebody's scratchings about an equity transaction of some kind.

It has no significance as a regular course of business document on its face, and, therefore, we object in that it is totally irrelevant.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, this is a document relating to the solicitation by Goldman, Sachs of other securities in the investment banking business of Penn Central. I think it is admissible on the point of conflict of interest.

THE COURT: Where does it come from?

MR. STITT: It comes from the files of Goldman, Sachs.

THE COURT: What is its relevance here?

MR. STITT: It is handwritten notes concerning Goldman, Sachs' interest in acquiring securities commission business from Penn Central.

THE COURT: Where? I suggest you hold this out and have it typed up so we can read it.

MR. STITT: Your Honor, back to Exhibit 35, I address my point that this document was received in the Welch trial on September 13.

THE COURT: That doesn't mean I have to receive it.

MR. STITT: Offer is made of Exhibit F-38.

MR. PIEL: This is like the last document, your Honor. It is handwritten notes of some unknown person from a file in the Philadelphia office of Goldman, Sachs saying "Suggested points in conversation with Penn RR," which, of course, would have been the predecessor corporation to the merged Penn Central, in the first place. It is undated. We don't know who wrote it, whether it was the office boy or a cadet trying to work up for his boss suggestions for things for the boss to do. It has no significant binding on Goldman, Sachs.

THE COURT: Mr. Stitt, when this document was produced at the deposition, was it identified, other than from the files of Goldman, Sachs?

MR. STITT: I can't make that representation at this point, your Honor. It came from Goldman, Sachs. It was the subject of pretrial testimony and the defendants raised no objection to it in the pretrial order.

THE COURT: You say subject to pretrial testimony. That's the very question I put to you. Objection sustained.

MR. STITT: Offer is made of Exhibit F-39.

MR. PIEL: More of the same, your Honor. Same objection.

THE COURT: I can't read this at all.

MR. STITT: These are notes by one Fred King. The come from the files of Goldman, Sachs. Again, handwritten notes concerning securities commission business from Penn Central.

THE COURT: I can't gather that from reading this.

MR. PIEL: Your Honor, Fred King is somebody at Penn Central, not at Goldman, Sachs, according to our information. May I say this, if I may take just a second at this point, your Honor, on this alleged issue of conflict of interest. Goldman, Sachs is a full line financial house that offers a wide range of financial services to all clients. It stands ready to serve their financial needs in any way that it can to be helpful with block trading or mergers and acquisitions, commission business, assisting them with their investment portfolios, placing their commercial paper. There is no secret about that. Our witnesses will testify to that fact.

That is why this is a false issue of conflict of interest. It was known to the world and it was known to any sophisticated business man, such as Mr. Stitt's client, that that is the kind of a house Goldman, Sachs is. Little business of paper that suggest that they hope to get some commission business from whomever was running the pension trust in Philadelphia at some point while somebody else was placing their commercial paper simply does not make a conflict of interest as a matter of law.

I am saying that Mr. Stitt doesn't need this kind of stuff. Any one of Goldman, Sachs' witnesses who come here will describe Goldman, Sachs' offer of all of its services to financial institutions.

THE COURT: Anyhow, I sustain the objection to

38. We are up to 39. The same problem, I assume.

MR. PIEL: Yes, your Honor. Same objection.

MR. STITT: Offer is made of Exhibit 40,your Honor, a memorandum by Mr. Levy, the senior partner of Goldman, Sachs.

MR. PIEL: No objection, except ro request the limiting ruling.

THE COURT: Granted.

(Plaintiff's Exhibit F-40 was received in evidence.)

MR. PIEL: No objection to Exhibits 41, 42, 43 or 44.

THE COURT: When you say no objection, I assume that means no limiting ruling either?

MR. PIEL: That's right, your Honor.

THE COURT: All right.

(Plaintiff's Exhibits F-41 through F-44, inclusive, were received in evidence.)

MR. STITT: Offer is made of Exhibit 45.

MR. PIEL: Here we have the post-purchase relevancy objection, your Honor. A month after the purchase. It has nothing to do with any representations to Franklin Savings Bank.

MR. STITT: This shows the continuing interest of

Goldman, Sachs in obtaining other business from Penn Central and provides I think a possible explanation for their continuance of the offer from Penn Central commercial paper.

THE COURT: What does that have to do with your claim?

MR. STITT: It shows the conflict of interest proof, your Honor.

THE COURT: Objection sustained.

MR. PIEL: No objection to 46, your Honor.

(Plaintiff's Exhibit F-46 was received in evidence.)

MR. PIEL: No objection to 47 and 48, except to request the limiting ruling.

THE COURT: Granted.

(Plaintiff's Exhibits F-47 and F-48 were received in evidence.)

MR. PIEL: No objection to Exhibits 49 and 50.

xx (Plaintiff's Exhibits F-49 and F-50 were received in evidence.)

MR. STITT: Offer is made of Exhibit F-51. Your Honor, at this point I must disclose that in the courtroom I have Mr. Asay from the Penn Central Companies who is prepared to give testimony which will be of assistance in authenticating Exhibit 51 and some of the others.

THE COURT: No objection has been raised to it.

MR. PIEL: Yes, your Honor, we do object to 51.

MR. STITT: Your Honor, I believe we have an agreement on Exhibits 52 --

THE COURT: Wait. 51 subject to connection, then.

MR. PIEL: Yes, your Honor. It should be offered through the witness.

THE COURT: We will take it this way.

MR. PIEL: There is no foundation until it is.

THE COURT: I will take it subject to connection, 51.

(Plaintiff's Exhibit F-51 was received in evidence.)

MR. STITT: Your Honor, 52, 53, 54 and 55 are charts and printouts which were prepared by Goldman, Sachs at the request of plaintiff's counsel, liaison counsel, during the course of this litigation. They are prepared by Goldman, Sachs from their records.

I was initially confronted with an objection under the best evidence rule, and when I communicated with Mr. Graham I told him where I was now in the position where I would simply have to subpoena the supporting information which was used to prepare those documents, which would probably have filled a truck, and I then received a letter from Mr. Graham Friday or perhaps Saturday which stated that as long as Goldman, Sachs and the defendants could reserve their right to correct any information on these exhibits, 52 through 55, which might be in error, they would not insist on the best evidence objection, and I took that to mean that they would be received, and I told Mr. Graham that this was certainly agreeable to the plaintiff.

MR. PIEL: That doesn't take care of all of our problems here. Let me address myself first to this matter. It is correct that a data bank of Goldman, Sachs had information in it concerning inventory legends of commercial paper, which used to prepare a commercial printout. That was work done for the plaintiffs and their liasion counsel to help them get the picture.

We told them at that time that there were certain minor inconsistencies in it, one of which might by chance get to be important if it is on a particular date, for example, resulting from the fact that there were, you might say, two kinds of inventory.

There is the inventory of other people's promissory notes that Goldman, Sachs has paid for and has borrowed money from the banks to pay for to finance the position, as they call it, which it may have to carry overnight and be responsible to the banks for and borrow money for, even though it has already been sold for next day's delivery.

6 So that's a position inventory that has to be financed.

Therefore, there is one set of records that will give that figure. On the other hand, such of the paper as has been sold for next day delivery is not available for sale, so it is not inventory available for sale. Of course, from the marketing point of view it is the inventory available for sale that is important.

We have another computer run that was very carefully prepared to give the total history of thedealing in Penn Central commercial paper, and a subsidiary run that summarizes it day by day. That's the correct record. This one that Mr. Stitt has, to the extent it is inconsistent, is not correct.

Subject to being corrected by the reference to those two other exhibits, and I don't really think we have any major problem about that, we don't object to his presenting this. The reason he wants to present it is that it shows more than our other runs do because it shows the inventory of some other issuers.

For that comparative purpose, we don't have any objection to its use. We do have --

THE COURT: What is 52? That is not within that category, is it?

MR. PIEL: What I have just said is applicable to -- there are two or three of them here that involve the same problem.

THE COURT: Does 52 involve this problem, re purchases?

MR. PIEL: This one is all right, your Honor, except for that point that it would be subject to a correction if inconsistent with the master computer run.

THE COURT: 52 is in, subject to correction.

(Plaintiff's Exhibit F-52 was received in evidence.)

THE COURT: 53?

MR. PIEL: Again, subject to correction by reference to the master computer run which will be offered in evidence here, no objection, except that we have a cutoff objection. This goes beyond the date of purchase. It goes into transactions -- I can't hardly read it -- all the 1970 figures are post-purchase figures, beginning with May 1, 1970, May 6, 1970.

THE COURT: Supposing, Mr. Stitt, you tell me what this document is, 53.

MR. STITT: This is a chart of prepayments, returns to company and buy-backs of Penn Central commercial paper for the years 1968, 1969, through June 21, 1970. It is prepared by Goldman, Sachs from its records.

THE COURT: What its relevance to the lawsuit?

MR. STITT: It has reference to the transaction on February 9. You will see four or five dates on February 9 which represent a buy-back by Penn Central, and we say at the request of Goldman, Sachs of $10,000,000 of Penn Central commercial paper from the Goldman, Sachs inventory. That is the subject of some -- of the earlier blue sheets, Exhibits F-2, 3, 4 and 5, which have already been received.

THE COURT: These are all return to company?

MR. STITT: That is under the column Return To Company, yes, sir.

THE COURT: Buy-backs of Penn Central? Is that true? Return to company?

MR. PIEL: That's the column he is talking about. Buy-backs is something else. He is talking about an item of -- will you repeat that?

MR. STITT: February 9.

THE COURT: 1970.

MR. PIEL: No objection to the use of this document to show the transaction of February 9, 1970. Otherwise objected to.

THE COURT: I will take it all in.

xx (Plaintiff's Exhibit F-53 was received in evidence.)

THE COURT: 54, this is another one that is subject to connection?

MR. PIEL: This is a computer run of sales of paper of four different issuers, Avco, Chrysler, Dow and Penn Central, which the plaintiff requested we put together for them.

Again, subject to correction by reference to the master computer run, we have no objection to this up to March 16, 1970. Again, this was prepared at the request of liaison counsel for plaintiffs who had cases involving purchases on many different dates, so we didn't cut off our production. That is the only reason he is offering it going beyond his own purchase.

If we had only had discovery in this case, we would have produced up to the 16th and not beyond. The offer should be limited to what it shows on March 16, 1970.

THE COURT: All right.

xx (Plaintiff's Exhibit F-54 was received in evidence.)

MR. PIEL: Was 54 received with the limitation?

THE COURT: Yes. We are up to 55.

MR. STITT: Offer is made of Exhibit F-55, your Honor. Here I would like to be heard on information contained therein which goes beyond March 16, 1970.

THE COURT: First let's find out what Mr. Piel's objection is.

MR. PIEL: The first point is the same one as the others, that it is agreed to be subject to correction by reference to the master computer run, if there are differences, to the extent that there are any differences that matter here. The second objection is to extending this document beyond February 16, 1970, the date of the plaintiff's purchase.

THE COURT: Yes, Mr. Stitt?

MR. STITT: Your Honor, addressing myself to the latter point, and that is the inclusion of information beyond March 16, you will recall perhaps from our discussion about the earlier blue sheets or certainly in my pretrial submissions that Goldman, Sachs told Penn Central officials in early February that they would not only be placing a limitation of $5,000,000 on their inventory, but that they would be laying the groundwork so that in the future they would not inventory Penn Central paper at all but would simply sell it on a tap issue basis whereby only when they had a customer for a particular note in a certain amount would they have the note written and purchase it.

This is material because in this document it shows that as of April 7 or perhaps April 8, 1970, the Penn Central inventory was zero and never changed thereafter. It is also material in that it shows the continuing volume of Penn Central's inventory as compared with Avco and Chrysler, Dow Chemical, other companies.

This document will show that what Mr. Wilson told Penn Central was going to happen on February 5 and February 6 did in fact happen on March 7. We think that although we did purchase on March 16, our purchase should not be viewed in a vacuum, that this information should be before the Court.

MR. PIEL: If your Honor please, we can deal with these issues if we have to extend the case in this way right down to the date when the Penn Central filed for reorganization on June 21, 1970.

The proof would show that throughout the month of April the notes sold very well to investors, and the reason there was no inventory was the outstandings and the Penn Central swing lines with banks kept the full amount out, as they say, that Penn Central wanted out.

They didn't need to rely on our inventory to keep out the amount of notes that they were rolling over. The market was rolling it over, and to the slight extent that there was a variation from day to day, they were paying that by paying banks who were extending unsecured credit for the purpose, for the so-called swing lines, instead of making Goldman, Sachs pay for the difference by financing an inventory position when they had to pay more in interest to finance the position than they were earning in the way of discount interest on the paper they held in inventory.

There is a big story to be told there if we have to go into it. I suggest to your Honor that that unnecessarily encumbers and extends the record of this case.

THE COURT: I will let it in.

MR. PIEL: We have a Securities Act case here that involves the purchase on a particular date.

THE COURT: I will let it in.

x (Plaintiff's Exhibit F-55 was received in evidence.)

MR. STITT: Offer is made of Exhibit F-56.

MR. PIEL: No objection.

xx (Plaintiff's Exhibit F-56 was received in evidence.)

MR. STITT: Offer is made of Exhibit F-57.

MR. PIEL: Here we object on the ground that this is under no exception to the hearsay rule, it is a working memorandum of Arthur D. Little & Company, not an agent for Goldman, Sachs, and it is a draft, anyway.

THE COURT: Mr. Stitt?

MR. STITT: Your Honor, this document was prepared for Goldman, Sachs, received in the course of its business. It contains a definition of commercial paper terms, there are a series of definitions which may be of some assistance to the Court.

THE COURT: Isn't there a better way of getting it --

MR. PIEL: There must be, your Honor.

THE COURT: Sustained.

MR. STIFF: Offer is made of Exhibit 58.

MR. PIEL: This, your Honor,is a post-purchase document dated April 28, 1970,.by one of the partners of Goldman, Sachs, pressing his personal views on matters of policy as of that date.

THE COURT: Are you offering the report itself?

MR. PIEL: It is dated April 28 at the top, more than a month after the purchase. It shows Mr. Whitehead disagreeing with other people in the organization concerning policies. It doesn't show any position of

Goldman, Sachs at all. It is one man offering to enter into a discussion of it with his partners. It is in no way binding on Goldman, Sachs --

MR. STITT: Your Honor, this is a statement by Mr. Whitehead, a member of Goldman, Sachs and a defendant in this case, it concerns statements by him of the importance of commercial paper to Goldman, Sachs and its willingness to take on inventory, and I believe this document will perhaps support our position that the reason -- for the reasons whereby Goldman, Sachs took the actions that it did take to reduce substantially and restrict its inventory on February 5.

THE COURT: This is after the event, isn't it, Mr. Stitt?

MR. STITT: Yes, that's true, your Honor.

THE COURT: What in here indicates --

MR. STITT: It is clearly his rejoinder to a report on commercial paper prepared under date of March, 1970, which I believe has already been received. So in a sense the two documents do go together.

THE COURT: It may be a report, but does it indicate any facts known to Goldman, Sachs prior to the sale of the stock to you?

MR. STITT: Only in a general proposition with regard to the inventory.

THE COURT: Objection sustained.

MR. STITT: Offer is made of Exhibit 59.

MR. PIEL: If your Honor please, the head of the credit department at Goldman, Sachs, which is a part of the commercial paper department, is Mr. Jack Vogel, who will be a witness here and who wrote some of the blue sheets that Mr. Stitt is offering in evidence. Fekula was one of his assistants and was suggesting to Mr. Wilson, the head of the credit department, suggestions about his view of functions performed by the credit department.

I submit, your Honor, that this document which was dated in 1968, two years before this transaction, and which is an underling's discussion for the benefit of his superior, does not come under the business entry exception because it is not the type of regular record on which decisions are made or obligations are recorded, and it is not an admission because the man writing it did not have that kind of agency. He was a subordinate making suggestions to his boss. He wasn't speaking on behalf of his boss to other people. It is not admissible and it is not a business record.

MR. STITT: If your Honor please, this is a business record, it is prepared by Mr. Fekula, who is in the credit department, it is addressed to the partner in charge, Mr. Wilson, with a copy to Mr. Vogel, dated June 6, 1968, and he discusses the green sheets, a number of which have already been received and which the testimony is was Goldman, Sachs' way of keeping purchasers informed of material facts.

Here is a statement on page 4 of this document by Mr. Fekula in this memorandum: "The criteria in determining if the green sheet should be put out on materiality and disclosure, whether there is an inventory on the name and to a lesser extent whether or not information can assist in selling the name." This tie-in of the green sheetwith materiality --

THE COURT: Is this a suggestion as to what it should be or what it actually is?

MR. STITT: That is his statement as to what it actually is.

THE COURT: The purpose of this outline is to set down the various alternatives to provide a format for a discussion.

MR. PIEL: That's right.

THE COURT: I don't gather this is what it actually is. This is what he is suggesting it should be.

MR. STITT: Your Honor, I direct your attention most respectfully to the paragraph here on page 4 immediately below numbered 5. He says: "The criteria determining if the green sheet should be put out on materiality" --

THE COURT: Objection sustained.

MR. STITT: Offer is made of Exhibit F-60.

MR. PIEL: No objection.

(Plaintiff's Exhibit F-60 was received in evidence.)

MR. STITT: Your Honor, we are now into the Penn Central --

MR. PIEL: You are not going to offer 61?

MR. STITT: I am not going to offer 61 and 62.

MR. PIEL: Withdrawn?

MR. STITT: For the time being. Offer is made of Exhibit F-63, and I would include in that offer the defendants' Exhibit BU, which is --

THE COURT: Wait a second. 60 and 61 or 61 and 62 are withdrawn?

MR. STITT: 61 and 62 are pamphlets of --

THE COURT: I am merely asking, are they withdrawn?

MR. STITT: At this time, your Honor. I may use them during the course of this trial. Offer is made of Exhibit 63,and I would couple that offer with, because it is a very dim Xerox, Defendants' Exhibit BU, or at least the typewritten transaction, if I may use that term, which the defendants' counsel have prepared.

MR. PIEL: No objection.

THE COURT: All right.

MR. PIEL: I would think you would just offer our Exhibit BU instead of having an illegible duplicate.

MR. STITT: Let's have them both.

THE COURT: What good is it, if you ever have an appeal in this case,nobody can ever read it, including me. Let's take out F-63 and we will put in Exhibit BU, which will become Plaintiff's Exhibit F-63.

(Plaintiff's Exhibit F-63 was received in evidence.)

MR. PIEL: This, of course, is somebody's handwritten notes after a meeting.. The reason we are not objecting is because we know who made it and he is going to behere as a witness.

MR. STITT: Offer is made of Exhibit F-64. A Penn Central document which I offer. I have Mr. Asay here, and since my adversary has indicated an objection to 64 through 80, perhaps we might by-pass those documents --

THE COURT: 64 through 80?

MR. STITT: Yes, sir.

THE COURT: Is it the same objection?

MR. STITT: The objections are on hearsay, authenticity, for the most part.

MR. PIEL: And also relevance, in many cases.

THE COURT: Then we will hold up 64 --

MR. PIEL: Through 79, your Honor. We don't object to 80.

(Plaintiff's Exhibit F-80 was received in evidence.)

MR. STITT: Offer is made of Exhibit F-81.

MR. PIEL: We interpose no objection to 81, 82 and 83.

(Plaintiff's Exhibits F-81, F-82 and F-83 were received in evidence.)

MR. STITT: 84 will be identified by Mr. Bock.

MR. PIEL: There we were going not to object except to request the limiting ruling.

THE COURT: On 84?

MR. PIEL: Yes, your Honor.

THE COURT: All right, F-84, limited.

(Plaintiff's Exhibit F-84 was received in evidence.)

MR. STITT: I would also offer the other documents, 85 through 90, and I don't believe my adversary has indicated any objection.

MR. PIEL: Yes, we have no objection to 85, 86, 87, 88 or 89. We do object to 90, a communication from Goldman, Sachs to holders of outstanding commercial paper after the railroad had filed -- the Penn Central Transportation Company had filed for reorganization under Section 77 in July, 1970, as being wholly irrelevant and out of time with the transaction with the plaintiff on March 16.

THE COURT: Unless there is something in this document that relates to that transaction --

8 MR. STITT: There is something in this document which emanates from Goldman, Sachs under date of July 2, 1970, and that is the list of purchasers, existing purchasers, of the Penn Central paper. This appears in the last three pages of the document. You will see that they are insurance companies, commercial companies, I believe a college, Muhlenberg College. This is in support of our claim for jurisdiction under the 1934 Act where we show that this commercial paper note of Franklin is a type that was purchased by the general investing public. We believe that that is material information.

Also, the document shows the amount of paper outstanding as of the date of the reorganization proceeding, some 82,000,000, and I have made a reference to that in my proposed findings, citing Exhibit 90 as support for it. Those are the principal reasons for this document being offered.

MR. PIEL: Your Honor, the amount of paper remaining outstanding at the time of the reorganization is totally irrelevant. Any number of things that anybody could imagine could have happened between March and June to affect the amount of paper outstanding, and as to the list of holders at the bank, the caption says that those are the holders who consented to disclosure of their identity to other holders.

All of the holders and the kind of purchasers of this paper from the time it was first offered up to March 16, 1970, are shown in the computer run, name by name, and that is a much more reliable picture of the character of investors than this extracted list of those who happened to consent.

THE COURT: Sustain the objection.

(Plaintiff's Exhibits F-85 through F-89, inclusive, were received in evidence.)

MR. STITT: Thank you, your Honor. In view of that last statement by my adversary --

THE COURT: Does that take care of all your exhibits?

MR. STITT: Yes, sir, with the exception of those which are to be connected by Mr. Bock and those which will now be authenticated, I trust, through the testimony of Mr. Asay, whom I would now call.

THOMAS P. ASAY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STITT:

Q How old are you, Mr. Asay?

A Sixty.

Q Give us your address, please.

A My office address?

Q Yes.

A 1138 -- Legal Department, 1138-6 Penn Center, Philadelphia, Pa.

Q Would you give us a statement of your education and professional background?

A High school education only.

Q By whom are you presently employed?

A Penn Central Transportation Comapny.

Q How long have you been with Penn Central Transportation or its predecssor?

A Since 1934.

Q And whereabouts have you been located during that period, sir?

A In Philadelphia, in the Legal Department.

Q What was your position during the years 1969 to

1970?

A Office manager in the Legal Department.

Q What is your presention position?

A Manager, special studies.

Q Are you here presently under subpoena?

A Yes.

Q Do you have a copy of the subpoena with you?

A Yes, I do.

THE COURT: You don't need that.

Q Does that -- was that subpoena served last November, Mr. Asay?

A Yes, it is dated November 27, 1974.

Q Did it request the appearance in court or the production of certain designated documents?

A Yes.

Q Did you find those documents in the files of Penn Central?

A Yes, I did.

Q Did you at my request make copies of those documents set forth in the subpoena?

A Yes.

Q In addition to that did you also make an effort to locate a final additional document, a letter from Mr. O'Herron to Mr. Bloom of the Interstate Commerce Commission under date of October 1, 1969?

A Yes.

Q Did you find such a document?

A Yes, I did.

Q Did you make a copy of it?

A Yes.

Q I show you Plaintiff's Exhibit 51 for identification and ask you if you can compare that with the copy of a letter found in the Penn Central files from Mr. O'Herron to Mr. Block of the ICC?

A Yes, I can.

This document, which is a letter from Mr. O'Herron to Mr. Block of the ICC, dated October 1, 1969, was found by me in a file which I have in my custody, which came to me from the Financial Department of the Penn Central Transportation Company.

Q Did your copy contain any signatures or was it a conformed copy?

A No, this copy that I found is a conformed copy.

Q I am going to direct your attention to signatures which appear on the last page of Charles E. Castle, Jr., and Mr. O'Herron. Can you identify any of those signatures for us?

A Charles E. Castle, Jr., I know personally, and that is his signature.

Q Was he employed by the Penn Central Companies on or about October 1, 1969?

A Yes.

Q Was Mr. O'Herron employed by the Penn Central Companies at that time also?

A I do not know the exact date when Mr. O'Herron came with the company.

Q Had he previously been with a subsidiary?

A I understand he was, yes.

Q In any event, at some time he did join the Penn Central Transportation ?

A He joined Penn Central, yes.

MR. STITT: Your Honor, I would submit that Exhibit 51, which has the file stamp of the Interstate Commerce Commission and the signature of Mr. Castle, has been authenticated, and I would ask that it be received.

Perhaps, your Honor, rather than get into extended debates over relevance, etc., in view of the fact that your Honor has indicated we will not sit after 12:30 today, I might simply proceed with the authentication of these various exhibits by Mr. Asay, and perhaps that would save time.

MR. PIEL: I will do it any way your Honor likes. If we take notes --

THE COURT: Let's do it one at a time. Have you any objection to 51?

MR. PIEL: Yes, your Honor.

THE COURT: What?

MR. PIEL: We are not going to object to this document as showing that Mr. O'Herron communicated with Mr. Block in these terms, but it is sheer hearsay, letter written to an outsider, it is not a business document. Penn Central is not a party to this action, so we ask for the limiting ruling. It cannot be taken as proof of matters asserted by Mr. O'Herron in this letter.

THE COURT: Objection overruled.

(Plaintiff's Exhibit F-51 was received in evidence.)

Q Mr. Asay, did you find in your files a memorandum from Mr. Bevan to Mr. Saunders under date of August 30, 1968? Exhibit F-64 for identification?

A Yes, I did.

Q Was Mr. Saunders with the Penn Central Companies as of that date?

A Yes.

Q Was Mr. Bevan with the Penn Central Companies as of that date?

A Yes.

Q I direct your attention to the signature of Mr. Bevan at page 3. Have you seen his signature on other documents in your custody?

A I have seen this signature as I see it here in this document on other documents in Penn Central correspondence, yes. That appears to be his signature.

MR. STITT: Your Honor, this document was labeled Bevan Exhibit 2 or Exhibit PB-2 at a pretrial examination on May 3, 1973.

I would offer it in evidence on the authenticity.

THE COURT: At the present time it is marked for identification here as Exhibit F-64.

MR. PIEL: If your Honor please, this is a communication in August, 1968 from one officer of the Penn Central Company to another.

THE COURT: It is the date that bothers me.

MR. PIEL: May I also call your attention to the last sentence of the whole letter which proves that as a personal and confidential consultation to discuss ideas, it hasn't even been approved by his boss at the time he poses it. It doesn't represent anything except discussion. It is not competent to prove facts asserted therein.

THE COURT: Objection sustained.

MR. STITT: I would simply suggest it has reference to a drastic cash drain --

THE COURT: 1968.

Q Mr. Asay, did you also find a memorandum from Mr. Bevan to Mr. Saunders and Mr. Perlman bearing a misdate of October 9, 1963, but should be October 9, 1968?

A I found this document. It has the date October 9, 1968.

THE COURT: It says 1968, Mr. Stitt.

MR. STITT: I guess my copy just came out -- the Xerox machine had a bad day, your Honor.

Q Does that bear Mr. Bevan's signature?

A It appears to be the signature of Mr. Bevan.

MR. PIEL: If your Honor please, this is like the previous document. It is the same kind of a communication from Mr. Bevan --

THE COURT: So far away from the date of the transaction here. Objection sustained.

Q Mr. Asay, did you find what has been designated as Exhibit F-66 for identification, a memorandum from Mr. O'Herron to Mr. Bevan on August 20, 1969?

A Yes.

THE COURT: Any objection? We are now in the first quarter of 1970.

MR. STITT: Your Honor, I would offer this. Perhaps the Court might prefer Mr. Asay's Xerox to mine.

THE COURT: I can read it.

MR. PIEL: Your Honor, the financial statements and the newspaper articles that are in this case tell all about the cash position of the Penn Central.

THE COURT: I will take it.

(Plaintiff's Exhibit F-66 was received in evidence.)

Q Did you find a copy of a letter from the Solomon Bros., Hutzler firm to Mr. O'Herron under date of September 25, 1969?

A Yes.

Q At that time did Penn Central have an office at 230 Park Avenue, New York, New York?

A I believe they did.

MR. STITT: I offer this document in evidence. It was marked PB-5 --

THE COURT: It is marked for identification in this action as F-67.

MR. STITT: Yes, sir.

MR. PIEL: May I inquire of the witness, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PIEL:

Q Do you know who Mr. James C. O'Brien is?

A No, I do not.

Q You never saw his signature before, have you?

A No.

Q You haven't any idea of what position he has with the firm whose name is on the letterhead?

A No, I do not.

MR. PIEL: Your Honor, this is an unidentified author of an incompetent opinion. We don't know what right he had to speak for his firm or whether -- what reason they had for not wanting to do a financing.

THE COURT: Objection sustained.

BY MR. STITT:

Q Did you find a memorandum prepared by Mr. O'Herron under date of October 22, 1969? This is referring to Exhibit F-68 for identification.

MR. STITT: Your Honor, this is really two documents that have been clipped together, each of four pages, and the last four pages is labeled "First Draft." I show that to the witness so there will be no dispute that we are talking about the same material.

MR. PIEL: I object to the form of the question because it assumes a fact not in evidence by asking him if he found a document prepared by Mr. O'Herron.

THE COURT: The only identification here I can see is the initials J.O.H.

Objection sustained.

Q Did you find a copy of a memorandum from Mr. O'Herron to Mr. Saunders under date of September 22, 1969? I am referring to Exhibit F-69 for identification.

A Yes, I did.

Q Do you recognize the stamp at the top of the document, the "Received" stamp?

A I am not familiar with that stamp, no, sir. That stamp apparently was in Mr. Saunders office.

THE COURT: It looks like an ordinary time stamp.

MR. STITT: That's the way it looks to me, your Honor.

Q Do you recognize any signature in the lower lefthand corner?

A The signature of Mr. O'Herron, although I am not too familiar with his signature.

Q You have seen it on other documents?

A I have seen it, yes.

Q This appears comparable to you?

A Yes.

MR. STITT: Your Honor, I would submit that this document dated September 22, 1969 had been authenticated and I would ask that it be received.

MR. PIEL: May I ask the witness, how many signatures of Mr. O'Herron have you seen?

THE WITNESS: Not too many, sir.

MR. PIEL: Are you sure that he wrote this in he lower lefthand corner or someone else may have written it there to indicate who it should go to?

THE WITNESS: I can't say for sure. As I indicated before, it is similar to Mr. O'Herron's.

MR. PIEL: I mean, it's got the same names, your Honor. On the ground that it isn't authenticated, but, in addition, on the ground that what one internal officer communicates to another regarding his estimates --

THE COURT: This is supposed to be 1968 and the first four months of 1969?

MR. STITT: No, sir. This is dated November 22, 1969.

THE COURT: Yes, but it is referring to '68 and the first four months of '69. The last paragraph reads "Road capital expenditure for the two-year period," I assume it is '68 and '69.

MR. PIEL: It is irrelevant unless it is shown that this is information someone else could have. Top financial officers of corporation who discuss their problems, make up their minds separately from that --

THE COURT: Objection sustained.

Q In 1970 was there a man by the name of R. W. Loder employed by the Penn Central Companies?

A Yes.

Q In what department was he?

A In the Financial Department.

Q Did you at my request search your files for a memorandum prepared by Mr. Loder under date of February 9, 1970? Exhibit F-70 for identification in this case.

A Yes.

Q Did you find it?

A Yes.

Q Is this document signed?

A No, the copy I have is a copy. It is not signed.

Q I will show you the copy that I have. Do you recognize those initials on the second page?

A Here again they appear to be signatures or initials of Mr. Loder that I have seen before, yes.

Q But for the addition of the initials of Mr. Loder, is the document F-70 for identification the same as the one that you found?

A The copy that I have without the initials appears to be the same document as you just handed me.

MR. STITT: Your Honor, I would offer this document.

MR. PIEL: Do you know where the document came from that Mr. Stitt has just shown you?

THE WITNESS: The copy that I found?

MR. PIEL: No. The copy that you found has not initials on it, is that right?

THE WITNESS: That's right.

MR. PIEL: So you don't know who prepared that document in fact?

THE WITNESS: Except that it was in the Financial Department, Mr. Loder's office.

MR. PIEL: It could have been some subordinate's draft of a proposed memorandum for somebody else?

THE WITNESS: No, sir,

MR. PIEL: You wouldn't know what it was, would you?

THE WITNESS: I would say it came from Mr. Loder's files, so it would appear to me to be a copy of something he wrote.

MR. PIEL: You don't know how it got into his file do you? Do you know who put it in?

THE WITNESS: No, sir.

MR. PIEL: Do you know whether Mr. Loder wrote all his own papers or whether drafts were prepared for his approval which he might or might not have approved?

THE WITNESS: I cannot answer that.

MR. PIEL: You don't know where this other peice of paper came from that Mr. Stitt showed you?

THE WITNESS: With the initials? No, sir.

MR. PIEL: Your Honor, in addition to the fact that if it could be authenticated it is double hearsay, quoting statements by someone not subject to cross examination and who had no duty to report to the writer, I would object to it anyway, but I say it has not been authenticated and I object to its receipt.

THE COURT: Objection sustained. Isn't it your problem, Mr. Stitt, that even if there is damaging information in these documents, you have to show that Goldman, Sachs knew about it?

MR. STITT: No, sir, your Honor, I do not. Under the 1933 Act, Section 12-2, Goldman, Sachs has the burden of showing that it not only has the burden with regard to material facts not only within its files, but with reasonable care it could have found, Goldman, Sachs has the burden of showing that it could not have located this information in the exercise of reasonable care. The deposition proof shows that Mr. Levy knew some six directors personally of Penn Central, that whenever Goldman, Sachs made a request for a meeting with Penn Central officials or for information, that this request was honored, it was never refused, and certainly by early February, 1970, Goldman, Sachs was on notice of a whole host of warnings which made it absolutely imperative for it to conduct a detailed, thorough investigation of the financial affairs of the Penn Central Companies, and these documents I have been offering are but examples of the kind of information that they would have found which would have showed that this corporation --

THE COURT: The material I have excluded so far is a year and a half, two and three years old.

MR. STITT: This last document, your Honor, is dated February 9, 1970.

MR. PIEL: It is not authenticated.

THE COURT: You know that is, but that is from way down in the bowels of the transportation company. That doesn't prove any notice to Goldman, Sachs that they ever would have found it out, unless they sent somebody to go in like a lawyer, who is instituting a lawsuit such as you have, and who sent out a dragnet subpoena saying "Give me everything you have got."

You are not maintaining that is the duty of Goldman, Sachs, are you?

MR. STITT: Goldman, Sachs had contact with Mr. Loder, Mr. Lepley, Mr. Bevan, Mr. O'Herron, Mr. Saunders, all of these gentlemen.

THE COURT: All right. Let's go on. We are up to Exhibit F-71.

Q Did you search your files for a memorandum at my request prepared by Mr. E. K. Taylor referring to a meeting on or about September 23, 1969, with ICC representatives?

A Yes.

Q Did you find such a memorandum of two pages?

A Yes.

Q What was Mr. Taylor's position in the railroad at that time?

A I don't know his exact title, but he was general attorney in the Legal Department of the Penn Central.

Q Is he still associated with Penn Central Companies?

A He is.

Q In Philadelphia?

A He is.

Q Would you tell us where you found your copy of this exhibit, F-71 for identification?

A The copy of the document you just described I found in Mr. Loder's file, from the Financial Department of Penn Central.

MR. STITT: Your Honor, this document was received in evidence in the Welch case, it is quoted in the opinion on jurisdiction by Judge Brieant, it refers to communications with ICC officials which are the subject of depositions which have been received.

THE COURT: How can I let in what this Mr. Taylor says Mr. Matris has said?

MR. STITT: I may have to call Mr. Taylor to authenticate this document.

THE COURT: Even if he testifies to it. Matris is the only one who can tell me what Matris said, not Taylor.

MR. STITT: I would submit that the document has been authenticated --

THE COURT: What does that have to do with it? Also authenticated is that this document has been found in the files of Penn Central Company or one of its subsidiaries, I haven't got them all straight yet, maybe by the time the trial is over I will know one from the other, but that's all it says.

That doesn't tell me what Matris is alleged to have said is actually what he said and whether it is true or not.

MR. STITT: It does have a reference to his personal reservations to the use of commercial paper.

THE COURT: That is what this document says. I don't know that Matris said it.

Objection sustained.

Q I ask you if you found in your search a memorandum from Mr. Bevan to Mr. Saunders under date of September 10, 1969, which is Exhibit F-72 in this litigation, consisting of two pages.

A Yes, I did.

Q Where did you find this document?

A I found this document in a file which I have in my custody which was received from the office of the chairman of the board.

Q Does Mr. Bevan's signature appear on the second page?

A The copy I have shows a signature which appears to be that of Mr. Bevan, yes.

Q On September 10, 1969 was Mr. Saunders chairman of the board?

A Yes.

MR. STITT: Your Honor, I offer this document in evidence.

MR. PIEL: If your Honor please, our objection to this document is that a review for the chairman of the board by the chief financial officer of the prospects for the company and his worries and thoughts about it is precisely the kind of information which presumatively would not be given to an outsider.

It is an internal consultation. It is contrary to practical probability that Goldman, Sachs by a request of any of these gentlemen would be given any such communication as this or allowed to be privy to their consultations about what to do for their company.

I say, therefore, it is totally irrelevant to the issues in this case.

THE COURT: I can't make that determination now. Maybe when the trial is over I can make the determination that what you just told me is correct.

MR. PIEL: There should be, then, a testimonial basis for the offer of this document that relates to its accessibility to Goldman, Sachs.

THE COURT: Mr. Stitt?

MR. STITT: If your Honor please, in just about this time, in early September, 1969, Mr. Wilson and Mr. Vogel were metting with Mr. O'Herron to discuss the Penn Central situation's cash flow. At that time they were told that the cash position of this company was going to be very tight or tight for the first quarter of 1970, and the testimony is clear that Goldman, Sachs never made a request of information from Penn Central which was refused.

The testimony is that Mr. Levy knew six directors on a first name basis.

THE COURT: I will take this subject to connection.

(Plaintiff's Exhibit F-72 was received in evidence.)

THE COURT: 73?

MR. STITT: Your Honor, I have another memorandum, Exhibit F-74 --

THE COURT: What did you do with 73? That's the covering letter for 72?

MR. STITT: That is what it appears to be, your Honor.

Q I would ask the witness if he found a copy of a memo from Mr. Saunders to Mr. Perlman under date of September 12, 1969.

A I did.

Q Does that make reference to a letter of September 10th from Mr. Bevan?

A Yes.

THE COURT: 73 is in, subject to connection.

MR. PIEL: Note our objection on the ground of authenticity, also, your Honor.

THE COURT: I understand.

(Plaintiff's Exhibit F-73 was received in evidence.)

Q I show you Exhibit F-74 and I ask you if you found a copy of a memo from Mr. Bevan to Mr. Saunders under date of September 10, 1969, one page, marked Exhibit F-74 for identification?

A Yes, I did.

Q Does that bear Mr. Bevan's initials?

A It bears initials which appear to be those of Mr. Bevan.

MR. PIEL: May I see it, please, as produced by the witness?

Q Where did you find this document, Mr. Asay?

A This document was found in a file which came to me or my custody, from the office of the chairman of the board.

Q That was at that time Mr. Saunders?

A Yes.

Q He is the person to whom this document was directed?

A Yes.

MR. STITT: I offer it, your Honor. I offer my copy, Exhibit F-74 for identification.

VOIR DIRE EXAMINATION

BY MR. PIEL:

Q Sir, you do not in fact know that those are Mr. Bevan's initials, do you?

A No, sir.

Q If I told you that in testimony in this proceeding Mr. Bevan was examined about that document and he said:

"Q Are you the author of this memorandum?

"A I have not read it, so I don't know.

"Q Does it bear your initials?

"A They are not my initials. I mean, it is my initials, but it is -- I didn't make them. But whether I dictated this or whether O'Herron dictated it for my signature, I couldn't tell you at this point."

Would that shake your confidence that you know anything about it?

MR. STITT: I object to the form of the question.

THE COURT: There is no jury present. Objection overruled.

A I would say that if Mr. Bevan said that that -- they were not his initials, then I would have to believe him.

Q You haven't got any contrary belief from looking at them?

A I can only say that this appears to be a memorandum from Mr. Bevan to Mr. Saunders --

THE COURT: It is a memorandum in which the addressee is Mr. Saunders, in which the typed name of the sender is David C. Bevan, and there are initials, "D.C.B."

But the question is, did Mr. Bevan write those initials, "D.C.B.," and Mr. Piel has read from testimony where he claims he didn't write them.

THE WITNESS: As I say, I cannot testify to that because I don't know. It is the way it appears.

MR. PIEL: Thank you. You have answered the question.

THE COURT: Objection sustained.

BY MR. STITT:

Q Mr. Asay, was there an employee for Penn Central during the months of February and March, 1970, named A. M. Underhill?

THE COURT: What's this, 75?

MR. STITT: 75 is a report from the -- SEC staff report, and I had designated it as an exhibit. My adversary has objected. It is not a Penn Central document. I don't intend to take it up with this witness.

(Record read.)

A I know there was an employee by the name of A. M. Underhill, but the exact dates that he was with the company, I am not certain.

Q What is your best recollection?

A I think he was with us at that time. But, as I say, dates, I can't testify actual dates.

Q Where was he located within the company?

A He was in our financial department.

Q At my request, did you make a search of the Penn Central files for memoranda prepared by Mr. Underhill for Mr. Saunders, dates of February 6th, February 19th and March 6th, 1970, Exhibits 76, 77 and 78 for identification, inclusive?

A Yes, I did.

Q Did you find those documents, Mr. Asay?

A Yes, I did.

Q Where did you find them?

A These documents were found in a file which I have in my custody. They came to me from the office of the chairman of the board.

Q That would be Mr. Saunders?

A Mr. Saunders' office, yes.

Q This is where you found these other materials consisting of the memoranda from Mr. Bevan that you testified about?

A Addressed to Mr. Saunders, yes.

Q Had you run across any of these documents before you made your search in response to this subpoena?

A Yes.

Q When was that, sir?

A During the investigation by the government agencies, the SEC and the Senate Commerce Committee.

Q When was that in point of time?

A The SEC came on our property in late '70 and early '71.

Q At that time you first saw these originals of Exhibits F-76, 77 and 78?

A yes, because they are contained in files which are requested from the office of the Chairman of the board at that time, for review by the SEC.

Q Did you find other memoranda of a similar nature from Mr. Underhill?

A There are other documents similar to these contained in this particular file, yes.

Q And signed by Mr. Underhill?

A Here again, I am not certain of Mr. Underhill's signature, but I have seen it, and these would appear to be his signature. But I cannot --

Q You made that comparison?

A Yes.

Q You have seen his signature on a number of occasions?

A Yes.

Q You know that he was employed by the railroad?

A Yes.

Q I see in addition to Mr. Saunders, that there is indicated copies to a number of other gentlemen such as Mr. Gorman. Was there a Mr. Gorman who was employed with Penn Central during February and March, 1970?

A Yes.

Q What was his position?

A he was president.

Q I see also a notice to Mr. Bevan. What was his position? I don't know if that appears in the record.

A I believe Mr. Bevan was chairman of the Finance Committee.

Q And Mr. Flannery?

A I believe at that time Mr. Flannery was our Vice President of Operations.

Q Do we also have him as receiving a copy of the memorandum from Mr. Saunders to Mr. Perlman under date of September 12, 1969 ,Exhibit F-73 in evidence?

MR. PIEL: It speaks for itself, I think.

THE COURT: Yes.

A Yes.

MR. PIEL: It is typewritten.

Q Was there an employee named Large?

A Yes.

Q What was his job?

A He was either a vice president of Traffic or an executive vice president at the time. I am not certain.

Q We have covered Mr. O'Herron. He was Vice President of Finance at about this time, 1969 to 1970?

A Yes.

Q Was there a Mr. Cole employed by the railroad?

A Yes.

Q What was his position?

A Mr. Cole, I believe, at that time was vice president in the Executive Department.

Q And Mr. Hill?

A Mr.Hill, I believe, at that time was comptroller or he could have been the vice president and comptroller.

Q I notice each of these memos refers to a meeting on Monday addressed to Mr. Saunders. Are you familiar with any routine of meetings for Mondays in which he would be involved?

A No.

Q The enclosures appear to be projections for earnings for the first quarter earnings. Did you find similar projections for other quarters of the other Penn Central Companies in its files?

A There appear to be documents of this nature in the file, although I haven't examined them from a study standpoint.

Q For periods prior to February, 1970?

A Yes.

Q You found those, did you not?

A Yes.

Q Are they of a similar nature to these three that I am holding in my hand?

A They appear to be similar, yes.

MR. STITT: Your Honor, I submit that Exhibits 76, 77 and 78 for identification have been authenticated.

I simply draw your attention to the fact that they were marked although I don't think identified by Mr. Bevan, that is Exhibits 9, 10 and 11 of his deposition, on May 3, 1973.

I make that disclosure to the Court. I think on the testimony of this witness they have been authenticated and I ask their admission.

VOIR DIRE EXAMINATION

BY MR. PIEL:

Q Mr. Asay, did Mr. Underhill ever sign a communication to you?

A No, sir.

Q When you say it is familiar, you mean that when you looked in the file that was sent to you, you saw what we are looking at here, is that right?

A Yes, and other documents where he signed, his signature appears.

Q And some other documents where you saw the same thing?

A Yes.

MR. PIEL: If your Honor please -- let me just ask one more question.

Q All of these persons who are named here in typewriting on this document are top officials or were top officials of the Penn Central Company or the Penn Central Transportation Company as it was at that time, is that right?

A Yes, sir, that's right.

MR. PIEL: If your Honor please, on the face of these documents they are the kind of data that are examined for management purposes, which are not given out to outside people. There will be a wealth of evidence in this case of meetings between representatives of the railroad, Mr. Bevan, Mr. O'Herron, Mr. Loder and others, in which they met with people from Goldman, Sachs and met with people from the commercial banks, who at the same time that Goldman, Sachs was marketing promissory notes for Penn Central to raise some of their needed cash, commercial banks were lending their own money to the tune of hundreds of millions of dollars. They had consultations and so did the Goldman Sachs people with the railroad officers to get whatever information those railroad officers would give them.

The evidence will show -- documentary evidence will show that it was that the railroadmen were willing to state and reveal to outsiders, without at the same time revealing it publicly to all of their stockholders, and in the nature of things this kind of management projection, although we don't really know that it was used for that purpose, is presumatively the kind that is not available to other people, and therefore I press an objection to the relevance as well as authentication.

THE COURT: Objection overruled.

(Plaintiff's Exhibit F-76, F-77 and F-78 were received in evidence.)

BY MR. STITT:

Q Mr. Asay, I ask you if you made a search for Exhibit F-79 for identification, a memorandum from Mr. Lepley to Mr. Loder under date of December 1, 1969?

A Yes, I did.

Q Did you find that document?

A Yes, I did.

Q Where did you find it?

A This document was found in a file which consisted of a file folder, which was sent to me and was in my custody, and it is from the office of the Treasurer of Penn Central Transportation Company.

Q What was Mr. Loder's position at Penn Central on or about December 1, 1969, do you recall?

A Assistant Vice President, Corporate.

Q What was Mr. Lepley's position at that time?

A Mr. Lepley is now Treasurer, but I think he was Assistant Treasurer at that time, I am not certain.

Q He was in the treasurer's office?

A Yes, I believe he was.

Q This is where you found a copy of this memorandum?

A From the file from that office, yes.

Q I notice a copy to J. O'Herron. Does that also appear on the copy which you found?

A Yes.

Q He has been previously identified.

MR. STITT: Your Honor, there are no signatures on this document. It bears initials to F-79 for identification a label "PLE-2" under date of May 22, 1973, indicating that it was the subject of Mr. Lepley's deposition on that date. I would think that the document, its reference to commercial paper, has been sufficiently authenticated.

THE COURT: Did Mr. Lepley identify this document as his document?

MR. STITT: Your Honor, I am informed by Mr. Taliaferro that he identified one of the documents that we intended to offer, but I cannot represent that this is one of them. I am sorry.

MR. PIEL: I don't know that this is one of them., your Honor. I am calling Mr. Lepley as a witness on the defense, if we get that far.

THE COURT: Then why don't we hold it for him?

MR. STITT: Your Honor, that would conclude my examination of this witness.

THE COURT: Thank you, Mr. Asay.

(Witness excused.)

- - -

THE COURT: Do you have another witness?

MR. STITT: Yes, Mr. Bock.

HARRY H. BOCK, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STITT:

Q How old are you, Mr. Bock?

A 60 years old.

Q Will you give us your address?

A My business address is 380 Madison Avenue, New York City.

Q Are you associated with the Franklin Savings Bank of New York?

A Yes, I am.

Q Was that formerly known as the Franklin Savings Bank of the City of New York?

A Formerly so.

Q What is your position with the Franklin Savings Bank?

A I am president and chairman of the board and chief executive officer.

Q How long have you held that position?

A Named chairman of the board at December, 1972, and president beginning July, 1969.

Q Would you give us a statement of your educational background, please?

A I attended the University of Pennsylvania, Philadelphia, Pa., Wharton College of Finance and Commerce, graduated in 1936 with a Degree in Economics.

Subsequent to that, upon employment in New York City, I attended Graduate School of Business, New York University. I had also taken courses at the American Institute of Real Estate Appraisers to broaden my background and education for the job that I have at the bank.

Q Did these courses at NYU include anything in the nature of finance?

A Yes, they were post-graduate courses under the popular professors educating those in Wall Street at that time.

Q When did you take those courses in point of time?

A That began in 1936 after employment in New York City for four years thereafter.

Q For whom did you first go to work upon your graduation from the Wharton School of Business?

Q I joined the Investment Banking and Brokerage House of Dominick & Dominick, here in New York City.

Q Where were they located then?

A At that time they were at 115 Broadway.

Q What was your position and your job with the firm of Dominick & Dominick?

A I was at that time called a statistician, which today is a securities analyst.

Q I guess the titles were not quite as formal in those days.

A Right.

Q Subsequently did you have some time out for Military Service?

A Yes, I was drafted and called into the Service in the Army for five years and was active in that period.

Q For whom did you go to work upon your discharge from Military Service?

A After leaving the Service I joined the former New York Trust Company at 100 Broadway. They eventually merged with the Chemical Bank and is part of it now.

Q How long were you with the New York Trust Company?

A Approximately five to six years.

Q What were your duties with the New York Trust Company?

A I was engaged first in the credit and investment research department as one of their senior members, and thereafter I was shifted from various positions of responsibility in the credit department and in the investment department, and doing accounts and investment programs there.

Q Did your work at New York Trust involve any responsibilities or activities which included the analysis of credit and investment?

A Very much so while I was in the credit and investment department, that was my primary responsibility.

Q Did you do any work involving commercial paper while you were with New York Trust?

A Yes, there were occasions when correspondent banks would write in asking for our appraisal in letter form of certain commercial paper, by name given to us, not by our recommendation to them.

Q They would give you a specific name and then you would report back?

A That is correct.

Q When did you join the Franklin Savings Bank?

A After leaving the New York Trust Company I was recalled to active duty during the Korean emergency, and I was a staff officer in Philadelphia working for the Army in contract negotiation, measuring financial ability of corporations to perform government contracts.

I was there for a little over a year. I was chief of the economics branch of that particular operation.

Subsequent to that I joined the Franklin Savings Bank.

THE COURT: When was that?

THE WITNESS: That was in 1953, I believe.

Q What position did you join Franklin in in 1953?

A I was employed as an assistant vice-president and understudy for the vice-president in charge of security investments.

Q As such were you the senior investment officer of the bank?

A I was, subsequently.

Q When did you become the senior investment officer of the bank?

A I can't recall exactly, but it is about two years after joining the Franklin Savings Bank.

Q I believe you testified that you became president of the bank on July 1, 1969?

A That is correct.

Q For some years prior to that you had been the senior investment officer?

A That is true.

Q Mr. Bock, since this case is about commercial paper and you are the first witness following Mr. Asay, I am going to ask you to tell us what it is.

A Commercial paper is an unsecured promissory note of a corporation, strictly short term. It is a self-liquidating type of obligation. The money is used to buy raw materials, to take these raw materials, fashion them into the end product with the idea of generating cash and tiding a corporation over a period of seasonal production or it could be in the place of the corporation buying farm produce, materials to create the end result.

Q It has always been considered that commercial paper is a very low risk obligation and purchase, the theory being that with its self-liquidating feature and cash flow, that there would be repayment at the maturity date.

THE COURT: What do you mean by self-liquidating?

THE WITNESS: Since the money that would be advanced by the commercial paper investor -- the money would be used strictly for short-term obligations, it would not find its way, nor should it, into long-term capital uses, such as bricks and mortar. It was merely, if I could put it this way, the lubricant to take care of short-term demands on the part of the company, to tide itself over to pay bills or to buy inventory or raw materials.

At the conclusion of the use of that money, the products would be sold, cash generated would come back to the company and the paper would ostensibly be paid off.

9 THE COURT: Go ahead, Mr. Stitt.

Q What companies issue commercial paper, generally speaking?

A Only the top ranking companies in the country are privileged to issue commercial paper. These are nationally known organizations who established good records, they have long histories, they are the dominant ones in their industry.

The mere fact that they can market commercial paper indicates a great deal of confidence in their ability to manage their company and to run a successful enterprise.

Q Would this include industrial as well as financial companies?

A It would include industrial, public utility and financial organizations.

Q Have savings banks in New York always been authorized to invest their moneys in commercial paper?

A No. Savings banks were given the privilege of investing in commercial paper in June of 1968 by legislation. This represented a broadening of their ability to invest in other than mortgage loans, security investments of a long-term nature.

Q I think it has been established in this case that commercial paper is issued by dealers.

THE COURT: Nothing has been established, to my knowledge.

MR. STITT: Strike that.

Q Mr. Bock, are there some companies that issue their paper directly?

A Yes. The finance companies normally do this.

Q Are there other companies that issue their papers through dealers?

A Yes, there are, quite a number.

Q After the passage of this law that you spoke of in June, 1968, did Franklin hear from any direct issuers of paper, commercial paper, or dealers issuing or selling commercial paper?

A Yes, we did have contact with the direct issuers, a handful, and certainly we were approached by the leading commercial paper dealers in the City, offering their services to the Franklin.

Q I ask you whether Goldman, Sachs was one of the dealers that approached Franklin?

A Yes, Goldman, Sachs was.

MR. STITT: Your Honor, at this point I simply draw attention to Exhibit F-81 in evidence. It is a letter from Mr. Bruno to Mr. Lyman, the president of the Franklin Savings Bank at that time, under date of June 24, 1968.

Q Mr.Bock, I am going to draw your attention to the second paragraph of this letter which is in evidence and which states, "Under this bill such obligations are to receive the highest rating of an independent rating service to be designated by the State Banking Board."

I show you that letter and ask you if you can tell us whether there came a time when there was such an agency designated.

A Yes. This was part of the law, and the Banking Board designated NCO, which is a subsidiary of Dun & Bradstreet Corporation, as being the independent rating agency at that time in 1968.

Q To your knowledge, was there any other agency designated by the Banking Board throughout the period, say, June, 1970?

A I don't recall that there were.

Q In addition to that, in addition to correspondence such as Mr. Bruno's letter to Mr. Lyman, did Franklin receive any brochures from any dealers or direct issuers concerning their commercial paper?

A Yes. Franklin received, I can recall this directly, a display of figures and background of a direct issuer, I can't recall the name of it, we did receive a pamphlet brochure from Goldman, Sachs outlining their long history of commercial paper activities and offering their services, tantamount to offering their services.

Q I show you Exhibit F-32 for identification and ask you if this is a copy of the document to which you have just referred?

A Yes, this is a copy of a document I received.

Q Following the letter from Mr. Bruno to Mr. Lyman, did you yourself have any communication or contact with Mr. Bruno during the period, say, June through September, 1968?

A Yes. Subsequent to Mr. Lyman receiving his letter, I received a telephone call from Mike Bruno at Goldman, Sachs. It was a preliminary conversation to get acquainted, and as the result of it I visited downtown at the Goldman, Sachs office, gave me a tour of the office, and we had luncheon together.

MR. STITT: Your Honor, at this point I am going to ask my adversaries to permit me to offer credit memorandum prepared by Mr. Bruno concerning his communications with Mr. Bock at the time. I believe they have been designated as Exhibits PB and PC, and I would offer them in evidence, and I hope without objection.

MR. PIEL: No objection.

THE COURT: All right, Plaintiff's Exhibit 91, formerly Defendants' Exhibit PB, that is one. Are there two you are putting in?

MR. STITT: Yes, I believe there is another one, your Honor, which was formerly marked PC.

THE COURT: All right. That is 91 and 92.

(Plaintiff's Exhibits F-91 and F-92 were received in evidence.)

MR. STITT: Your Honor, I would just note that they are credit memoranda by Mr. Bruno under dates of September 6, 1968, and September 26, 1968, concerning his communications with Mr. Bock at that time.

THE COURT: Do you want to stop at this point?

MR. STITT: Yes, sir.

THE COURT: 10 o'clock tomorrow morning.

(Adjourned to June 3, 1975, at 10.00 A.M.)

FRANKLIN SAVINGS BANK OF NEW YORK,
Plaintiff,
-against- 71 Civ. 882
GUSTAVE L. LEVY, et al.,
Defendants.

New York, June 3, 1975;
10.00 A.M.

Trial resumed.

- -

HARRY H. BOCK, resumed.

THE CLERK: Mr. Bock, the Court wishes you to note that you are still under oath.

THE WITNESS: I understand.

DIRECT EXAMINATION CONTINUED

BY MR. STITT:

Q Commencing in or about September, 1968, did you purchase commercial paper for Franklin's account?

A Yes, we did. This was the beginning of our purchase program.

Q Did you purchase such paper from Goldman, Sachs and other dealers?

A Yes, we did.

Q Would you address yourself to a three-page tabulation, Exhibit F-82 in evidence, and tell us what that is, please?

A This represented an informal logging of all the commercial paper transactions that the bank did between the period August, 1968, and January of 1971.

Q Was that log prepared and kept by you in the course of your business?

A That is true.

MR. PIEL: No objection to this document.

THE COURT: It is in already.

Q Would you tell us, Mr. Bock, of the factors that you had in mind in selecting a dealer or dealers for Franklin to do business with in purchasing commercial paper?

MR. PIEL: Objection, your Honor.

THE COURT: Sustained. I gather Goldman, Sachs held itself out as a dealer pursuant to the communications you put in evidence, held itself out as reasonably expert in the areas in which they were offering their services, and all the usual trappings that go with it. I assume the plaintiff wanted to get certain investments.

MR. STITT: There is no dispute about that, as far as I am concerned, your Honor.

THE COURT: I don't think there is any dispute by the defendant either.

Q Did you purchase any paper from direct issuers, Mr. Bock?

A No, we did not, the reason being we wanted an additional coverage provided by dealer-originated paper where we felt we had a line of protection, where they would have access to corporate information and would exercise a great deal of care in surveillance of financial detail and financial information.

Q Was there any difference in yield between paper that you would acquire from dealers and from a direct issuer?

A Yes, it is normal that dealer paper yield a higher rate of return that direct paper.

Q Was that also a factor in your decision to buy from dealers?

A That was definitely a factor.

THE COURT: Why should that be?

THE WITNESS: I would believe that the direct issuers like to establish institutional buyers and have them come back from time to time buying their quality paper, which conceivably could be rated on a higher scale. These are nationally-known finance companies with tremendous amounts of capital, and they are more evidently engaged in a self-liquidating process, which I covered yesterday. Their receivables would turn over.

Q You mentioned certain protection that you would expect to receive from dealers, I think that was your word.

Could you expound on that for us, please?

A Pardon me?

Q You mentioned the word "protection" that you would have from dealers.

A That is true.

Q Would you expound on that for us, please?

A The Franklin Savings Bank does not have a full-fledged credit department. As a matter of fact, it has none. We have no analyst, we have simply a senior man who is experienced in security and credit analysis.

We rely on information provided to us, and this is true with corporate bonds and in security investments, information provided to us from the Street, which is substantial. Many banks operate this way.

At the time of the purchase, the Franklin was half its size and obviously would not have a credit department. Therefore, the line of protection that I speak of is the financial information which come to us from outside sources.

Q Would that include the dealer?

A That certainly would.

Q Would you tell us your first contact with Goldman, Sachs during your lifetime?

A The first contact was a preliminary conversation, a very polite call, by Mike Bruno to the bank --

Q Prior to that, Mr. Bock, if I may refresh your recollection, did you have any contact with Goldman, Sachs while you were at Wharton?

THE COURT: At what

MR.STITT: Wharton School of Business.

A Yes, I did, being a student in banking and financial institutions, college education, we were required to submit reports and theses, and I recall very vividly a company report that I was required to prepare, and this was in the days before the SEC and information was hard to obtain, however I did get information through channels labeled Goldman, Sachs, and I was most pleased with the detail and the promise --

THE COURT: Come on, Mr. Stitt. Don't tell me he bought that based on something he learned when he went to the Wharton School.

Q Mr. Bock, I am going to draw your attention to Exhibit 32 which you identified for us yesterday as having been received.

THE COURT: The first contact was the call from Mr. Bruno. That's what he said.

MR. STITT: Yes, sir. Also the letter to Mr. Lyman, Exhibit F-81.

Q I am drawing your attention to this statement in Exhibit F-32 in evidence, the brochure:

> "Goldman, Sachs provides financial statements and supplementary data on companies issuing notes to the investor."

I ask you, Mr. Bock, did you during your course of business with Goldman, Sachs subsequent to receiving this brochure receive such written financial information?

A Yes, I did.

Q How would it be received?

A It would be received in the mail.

MR. PIEL: I object to that. We should have recollection, not speculation.

THE COURT: I don't think he is speculating. He received it through the mail.

MR. PIEL: I was objecting to the form of the question, your Honor. It is all right. He answered it.

THE COURT: He answered, so it is a proper question.

Q I am going to show you these three documents --

THE COURT: What are you showing him, for the record?

MR. STITT: Original documents, copies of which have been marked as Exhibit F-84, I believe, for identification, your Honor.

THE COURT: No, F-84 was admitted in with a limiting ruling, so it is in, F-84. Is that what you are showing him?

MR. STITT: Yes, sir. I am showing him three original copies, one colored blue, one yellow and one white.

THE COURT: Is that all F-84?

MR. STITT: These are copies of F-84, and I would suggest that after they have been identified by the witness that they be marked F-84-A, B and C, or perhaps substituted for Exhibit F-84, since these are the originals.

THE COURT: All right, go ahead.

A The information I have in hand handed to me by my counsel was received from Goldman, Sachs & Company.

Q The first sheet before you, does that have a date on it, Mr. Bock?

A At the bottom it is dated February 18, 1970.

Q Is that colored green or blue?

A No, that color is green.

Q The next document that youhave in hand?

A It is dated May 7, 1969, and it's color is yellow.

THE COURT: May 7?

THE WITNESS: May 7.

Q And the last document, Mr. Bock?

A The last pages are white, without a date, but headed "Financial Statements of Year-End 1968-1967."

Q I am going to direct your attention to the last page of the white sheets and ask you if you find a date?

A The last page has a date of May 7, 1969, on the bottom.

Q Mr. Bock, I draw your attention to the green sheet of February 18, 1970, and the underlining in the text with red pencil. Who made that underlining?

A Those were my underlinings.

Q Could you tell us when you made those?

A Approximately at about the time I received the information through the mails, March of 1970.

Q Is it your testimony that you read that information?

A Yes, this would certainly indicate that I read it. It is my habit to underline what I read.

Q I draw your attention to a circle in the upper lefthand corner of the February 18 green sheet and I ask you if you can identify who made that circle and, if so, for what purpose?

A Yes, that circle was made by me for the purpose of filing. My secretary would know when the circle appeared on the top of anything to be filed that that was the subject matter for filing.

MR. STITT: I ask that the three documents with the colors green, yellow and white be substituted as Exhibit F-84. The Court will notice that it does not have handwritten notations "FR1783," and that is because that is our office file number and it was made by us on the Xerox that we got from the Franklin Bank. Otherwise they are identical, and I so represent.

2 THE COURT: All right, we will substitute one for the other.

Q Mr. Bock, is Franklin the subject of examinations by examiners of the New York State Banking Department?

A Yes, we are, and others.

Q Can you tell us whether or not the documents before you are that type of written material concerning the securities of any such interested bank examiners?

A It is possible they make a spot-check of financial information you have in your files to assure themselves that you have looked at something.

THE COURT: Wait a second. That answer is it is possible that they may do so, that you may have looked at something? What's the purpose of that?

MR. STITT: I am going to have to tie it in with another question.

Q Mr.Bock, when you say it is possible, do you know of your own knowledge whether bank examiners have examined and looked for credit information regarding securities that the bank has purchased?

A Yes, this is true. I am trying to point out it was done on a spot basis, not on a continual basis. Therefore, it was apotential request, not necessarily a habitual one.

Q How did your business with Goldman, Sachs in volume relate to the amount of commercial paper business that you did with otherdealers?

A We did the bulk of our transactions with Goldman, Sachs & Company.

Q I ask you, Mr. Bock, whether the type of written financial information before you as Exhibit F-34 was or was not a factor in the bulk of business that you did with Goldman, Sachs?

MR. PIEL: If your Honor please, I object to the question.

THE COURT: Why?

MR. PIEL: It is too vague in form, whether the type of information was a factor. This is getting very foggy as to what the gentleman relied on in making purchases.

THE COURT: I flipped through the pages when they were admitted yesterday. I think there is sufficient basis of the type of information that the defendant furnished the plaintiff. He says he relied on that. That was important to him in making up his mind whether he should purchase some of the commercial paper that the defendant was trying to sell.

MR. PIEL: I was suggesting, your Honor, he should identify the paper he relied on and not talk about the type of paper that he relied on in doing business with Goldman, Sachs.

THE COURT: I would take it aspreliminary information until we get to the $457,000, or whatever it is.

Q Do you have the question in mind, Mr. Bock?

A Yes, I do. The receipt of material from the dealer would be an important part of the reason for doing business with that particular dealer.

Q Would you tell us, Mr.Bock, of the type of commercial paper that you expected to have offered to you by Goldman, Sachs?

MR. PIEL: I object to the question.

THE COURT: Sustained.

Q At the outset of your relationship with Goldman, Sachs, did you have any conversation or conversations with Goldman, Sachs salesmen concerning the kind of paper that you wanted?

A Yes. That was --

THE COURT: You are not objecting to that, are you?

MR. PIEL: No. I just ask that the salesman be identified.

THE COURT: Do you know the name of the salesman?

THE WITNESS: Yes, I do. The salesman was Mike Bruno. We had conversation on the phone before our first purchase setting out quite clearly that in order for the bank to hold commercial paper it had to be rated prime by NCO, and in addition to that I expected that the paper offered would not only be rated prime, but it would also be of prime quality.

THE COURT: For the record, what is NCO?

MR. STITT: NCO, your Honor --

THE COURT: Not you, the witness.

THE WITNESS: National Credit Office, the agency designated by the Banking Board to independently rate commercial paper.

THE COURT: Which Banking Board?

THE WITNESS: The New York State Banking Board.

THE COURT: National Credit Office.

Q What factors would you consider important in determining prime quality, Mr. Bock?

A Prime quality would embrace the following, namely, a corporation foremost in its industry, a company with a long record of operations, dominant, a company that has shown earnings capacity, a company that has for the purposes of commercial paper a genuine and good cash flow, since that is the repayment background which we look to.

Also I would expect that there would be evidence of sound management, also management that would be capable in fulfilling projections which would be made to the public in their annual reports and by speeches before securities analysts.

Q Would this include projections concerning earnings?

A Definitely yes.

Q Would bank lines have any significance among these criteria?

A Yes, that would be an important consideration. The bank lines should in my opinion fully cover the outstanding amount of commercial paper, which is the recourse that the company has in the event it is unable to pay the banks pickup.

THE COURT: Just a second. For the record, what do you mean by bank lines?

THE WITNESS: Comercial bank lines of credit.

Q How does that operate with respect to a commercial paper's note when it becomes due, Mr. Bock? Maybe that would be of some assistance to the Court.

A In theory, if the paper were not paid off by the internal cash resources of the issuer, the borrower would resort to its bank lines of credit and fundamentally use the credit and resources from the commercial bank to repay the holder of the commercial paper.

THE COURT: Do these bank lines have to be established specifically to cover the failure of the corporation to meet its obligation or is this general bank line?

THE WITNESS: I don't believe it is specifically laid off against commercial paper. However, we look to a 100 per cent coverage of the amount of paper outstanding at any time, to the extent that we know the outstanding.

Q Is this a commitment that is exacted of the bank prior to the particular paper coming due?

A That is true.

Q Would you describe for us, Mr. Bock, the mechanics and routine which you followed generally in acquiring commercial paper from Goldman, Sachs, whom you would look to, the use of the mails and the telephone, things of that nature?

A A transaction for the purpose of commercial paper would more normally initiate by me -- would be initiated by me by telephone --

MR. PIEL: If your Honor please, I object to this inquiry into generalities. The question is --

THE COURT: I will sustain the objection. How about getting down to the transaction that we are worried about?

Q Mr. Bock, would you look at Exhibit F-82 before you and give us the dates on which you purchased commercial paper from Goldman, Sachs & Co. of Penn Central or Penn Central Transportation Company?

A Are you requesting all of them, Mr. Stitt?

Q Yes, if you would give us the dates.

THE COURT: It is in evidence.

MR. STITT: Your Honor, there are five, and I draw attention to Exhibits F --

THE COURT: There are five what?

MR. STITT: To Exhibits F-88, F-86, F-85, F-87 and F-83.

THE COURT: I don't follow you. You have given me a number of exhibits in some sort of mixed-up order. What are you trying to show? These exhibits are in evidence, are they?

MR. STITT: Yes, sir. They show purchase dates of September 25, 1968 --

THE COURT: All right, the exhibits speak for themselves. What's the next point?

Q Mr. Bock, did you --

THE COURT: Let's get down to the one in question and then ask him whether there are any other conversations specifically addressed to this purchase that he hasn't testified to so far that would have a bearing on this transaction.

Q Mr. Bock, I am going to show you Exhibit F-88 in evidence and ask you to tell us what those Xeroxes are, please.

A Exhibit F-88 is the purchase of commercial paper made from Goldman, Sachs on March 16, 1970, in the amount of $500,000 which was in default at maturity date.

THE COURT: You purchased it March 16?

THE WITNESS: March 16.

THE COURT: 1970, for $487,958?

THE WITNESS: That was the money involved. The face amount or prior value on the extreme lefthand side is $500,000.

THE COURT: Go ahead.

THE WITNESS: This top sheet labeled "Order No. 5039" is an internal form used by the Franklin Savings Bank to record all purchases and sales of securities.

This particular sheet shows 500,000 face amount was bought on March 16 to mature on June 26, 1970, at a yield basis of 8.83.

It also shows the interest calculation which we would receive upon the full payout of the $500,000 on the maturity date. The net amount owing on the purchase was $487,985.33 in Federal funds on that day.

3 Q Would you tell us about the second document which also relates to this purchase and that the second document has a letterhead "Franklin Savings Bank, City of New York," with a reference number of 2668 on the extreme righthand side. This is a follow-up internal form which is forwarded to the Franklin Savings Bank correspondent bank, which is Savings Bank Trust Company which was our bank of deposit and custodian with respect to security purchases and sales.

Q Tell us how the Savings Bank Trust Company was involved in this transaction.

A The Savings Bank Trust Company makes -- accepts delivery of the ticket when delivered by the broker and makes payment to them upon our instructions.

Q Is there any communication by telephone and/or mail between Franklin on the one hand and the Savings Bank Trust Company on the other hand?

A Yes. In an instance of this trade, which is the same day delivery, March 16, we would telephone instructions to Savings Bank Trust Company to accept delivery and make payment as specified in our follow-up form, which is the reference that I have here before me.

Q Is that follow-up form before you mailed to the Savings Bank Trust Company?

A That is mailed to the Savings Bank Trust Company.

Q The original of it is mailed?

A Yes.

Q Are there any other mailings between the Franklin Savings Bank and the Savings Bank Trust Company?

A Yes, there would be an advice received back from Savings Bank Trust Company, and that's the next form labeled R64383 at the righthand corner.

This indicates that on March 16 the Savings Bank Trust Company did put into the Chemical Bank, which is the physical custodian for our securities, the Penn Central paper received from Goldman, Sachs. Savings Bank Trust Company has no vault facilities. They use the commercial banks.

Q So this mailing from Savings Bank Trust Company to Franklin would confirm that a note had been physically executed and delivered?

A That is true.

Q Is that of any importance to the Franklin Savings Bank and/or bank examiners?

A Yes. This is very important to us. It indicates that the transaction was consummated and that we indeed did receive through our correspondent bank a promissory note or commercial paper certificate.

Q Was there a similar format involving the bank, that is Franklin, and the Savings Bank Trust Company followed in connection with your previous transaction with Goldman, Sachs?

A The same format was followed in almost -- in all cases.

Q With the physical delivery being made to the Savings Bank Trust Company?

A That is true.

Q Is there another document that's part of Exhibit 88 before you?

A The next document, which is also identified by R64383, is a follow-up advice from Savings Bank Trust Company to the Franklin indicating that they have debited our account with them for the amount of the purchase.

Q How would that be received, Mr. Bock?

A That would be received in the mail.

Q Do you find another document?

A The next document is a letter confirmation from Goldman, Sachs & Company and headed so, headed "Goldman, Sachs & Company," dated March 16, addressed to the Franklin Savings Bank, confirming the purchase that we made of the $500,000 face amount Penn Central Transportation Company paper on March 16, 1970.

Q How would that confirmation letter have been received by Franklin?

A This would comethrough the mail.

Q Is there a notation in that letter of March 16, the confirmation letter from Goldman, Sachs, indicating enclosure of any financial information?

A Yes, at the bottom where the space is provided they have Xed "we have enclosed for your files financial information received by us from the company."

MR. STITT: Your Honor, I draw the Court's attention to some other confirmation letters appended to Exhibits F-83, F-86, F-85 and F-87.

Q Mr. Bock, I draw your particular attention to the confirmation letter of March 13 regarding a Penn Central purchase on that date. I draw your attention to the X by the sentence "We have enclosed for your files financial information received by us from the company," and I now draw your attention to the green sheet dated February 18, part of Franklin Exhibit F-84 in evidence.

I ask you, Mr. Bock, whether you were able to find in your files any other green sheets of that date of February 16?

A No. I found no other green sheet or financial information of the type that we are discussing in my files.

Q Is there any explanation that you can make for your failure not to find two February 18 green sheets?

A The explanation I offer is that my secretary has standing instructions not to file duplicates, and I would consider any material received on either date, March 13 or March 16, as a duplicate.

Q Now, Mr. Bock, in connection with this transaction of March 16, as well as others, did you have any telephone conversations with representatives of Goldman, Sachs?

MR. PIEL: I object to the form of the question, "including this transaction and others." I think it should be separated.

THE COURT: Agreed.

MR. STITT: Your Honor, I want the record to show that I agree with my adversary, at least to the extent that it is a poor question, and I would ask to withdraw it and put another question to the witness. Your Honor, I ask that we take judicial notice of the fact that March 16, 1970, was a Monday.

THE COURT: Yes.

Q Would you tell us, Mr. Bock, when you routinely arrived at the bank on or about that date?

A It would be customary for me to arrive at the bank at 8.45 to 9 o'clock, and my routine would be to receive my mail as soon as it is delivered to my desk. I was responsible for the money position of the bank and would be in touch with my comptroller's department to determine what position we would have which would call for investment that particular day. I would have that information by 10 o'clock at the time that the financial markets would open.

Q By what time would you have finished reviewing your mail?

A That would take no longer than 10 or 15 minutes, depending upon when I received it.

Q I ask you whether on that date at some time after 10 o'clock you had a telephone conversation with Mr. Kaufman of Goldman, Sachs?

A Yes, I did. Mr. Kaufman at that time had taken the Franklin contact from Mr. Bruno.

Q Could you tell us whether you called him or he called you?

A I called him on that particular day and asked what offerings they would have in commercial paper, that I had money to invest.

Q What did Mr. Kaufman say to you?

A Mr. Kaufman said, as would be normal in an opening conversation of that kind, what maturity dates are you looking for and what is your size?"

This I would tell him.

Q By "size" you mean the amount of money you had available investment?

A That's right, the amount of money I had to invest. I would tell him a million to a million and a half, and I was looking for 90-day paper, which was our desire at that time.

Q Did you specify any particular names to Mr. Kaufman?

A No, I did not.

Q Was that the normal practice, that you would not specify the names?

A I can't recall ever having contacted any dealer asking for specific names. I would ask what is available in the marketplace at the particular time of my call.

Q Can you tell us, and you may feel free to use your log, Exhibit F-82, to refresh your recollection, as to what names Mr. Kaufman mentioned during this conversation?

A The names mentioned to me on that date were commercial paper of Thomas J. Lipton, Inc., and Penn Central Transportation Company.

Q Did you purchase both of those names on that date?

A Yes, I did. I bought a one million dollar piece of Lipton and a $500,000 piece of Penn Central.

Q Mr. Bock, I asked you about the significance of the mailing from Savings Bank Trust Company confirming receipt of the executed note. I ask you now to tell us what significance, if any, you attached to the confirmation letters, but specifically the confirmation letter of March 16, 1970, which is part of Exhibit F-88, and which I will place before you.

MR. PIEL: I object to thequestion.

THE COURT: I don't know what you mean by "significance." It merely records an entry.

MR. STITT: Your Honor, I will rephrase the question, if I may.

Q Did the Franklin Savings Bank and/or bank examiners attach any significance or importance to confirmation letters with regard to the bank's securities transactions?

A Yes, it is mandatory that the Franklin have in its files some evidence of having consummated a trade or a securities transaction. This is required by our auditing department.

Our auditor reports directly to the chairman -- to the board of trustees of the bank. The auditing department scrutinizes every transaction of that character and respect.

In addition, as I have mentioned before, the banking department examines, the Federal Deposit Insurance Company examines the bank, and so does an outside independent firm of accountants on behalf of the firm, directed by the board.

Were there no confirmations in our files with respect to any transaction, we would have to explain why not, and we, of course, do require it of all of our dealers, to send one in.

Q Is it your testimony that examiners from these various governmental agencies on occasion look for confirmation letters in their spotcheck of the bank's files?

A They definitely do.

Q Was that true in 1970?

A Yes, it was true in 1970.

Q Has there been an occasion when you have not received a confirmation letter in normal course?

A There have been delays in receiving a confirmation letter owing to the mails or administrative delay, but if that were to happen we would ask for a duplicate copy to be sent as fast as possible --

Q I didn't mean to interrupt you. Has that on occasion happened?

A It has.

Q Have you made that request for the confirmation letter or duplicate to be sent?

A Definitely, that is true.

Q I ask you, Mr. Bock, do you know of any house that does not send out confirmation letters with regard to its security transactions?

A Based on my experience, I know of no house that has not failed to eventually send out a confirmation slip or a confirmation letter.

MR. STITT: Your Honor, I simply note for the record a reference in the green sheet of February 18 to a $56 loss approximately for Penn Central Transportation

Company in the year 1969.

MR. PIEL: May I ask that Mr. Stitt keep his voice up? He drops it when he goes up in front.

THE COURT: I don't know what you mean by a $56 loss.

MR. STITT: 56 million, your Honor.

Q Mr. Bock, I am going to draw your attention to the following exhibits, the portions that I will read to you, and also in this instance a portion of testimony which is part of this record.

MR. PIEL: May I first inquire, your Honor, may I be brought up to date on what it was that Mr. Stitt said that I couldn't hear about this green sheet?

THE COURT: He just said, "I call your attention to something marked on the green sheet showing a $56 loss." Now he said he changes it to 56 million dollar loss. There is a slight difference of a couple of zeros.

MR. STITT: Your Honor, I will now read this material to the witness --

THE COURT: What are you reading from? Don't walk up to me. If you walk up to me, Mr. Piel can't hear you. It is more important that he hear you for the purpose of objecting than I hear you. Maybe you should stay back there and then you will have to keep your voice up and we will all hear you.

MR. STITT: The light is bad at this lectern, your Honor.

THE COURT: The light is bad all over this courthouse.

Q Mr. Bock, I am going to ask you whether prior to Franklin's purchase of March 16, 1970, or at any time thereafter, did Goldman, Sachs disclose to you the following information. Reading first from the blue sheet of February 5, 1970 --

THE COURT: It is more important to give me the exhibit number first.

MR. STITT: I am sorry, your Honor. It is Exhibit F-2 in evidence.

Q Beginning at the top. This is a memorandum by Mr. Wilson on the date of February 5:

"This morning's press announced that Penn Central Transportation Company had an operating loss of $56,000,000 for the year 1969 and that the Railroad was writing off its investment in equipment facilities and terminals being used for long-haul passenger service west of Harrisburg, Pennsylvania, and Albany, New York."

Continuing in the second paragraph, the first sentence:

"I told John", parenthetically, Jonathan O'Herron, financial vice-president of Penn Central with whom Mr. Wilson had a conversation on this date by telephone," I told John that it was unfortunate that we did not have some indication of the magnitude of the total losses for 1969 as we were going to need a story to tell existing holders of Penn Central's paper and new purchasers of paper."

Continuing with Exhibit F-20, another blue sheet by Mr. Wilson, this one under date of October 22, 1969:

"John O'Herron, vice-president, called me to

> say they anticipate receiving the approval from the ICC for the additional 50 million dollars of commercial paper. He went on to say the Penn Central will show a small loss in the third quarter but anticipate the fourth quarter will be 'in the black' with a good improvement."

I also call attention to Mr. Wilson's testimony on examination before trial on December 29, 1970, page 133, lines 17 to 23, which reads as follows:

"Q Did you have no inkling prior to that that there were going to be losses" --

THE COURT: You asked him did he have any inkling prior to that. When is "that"?

MR. STITT: Your Honor, if I may, I am going to read the prior answer given by Mr. Wilson as a framework on this page beginning at line 11.

Q "A The news of the fourth-quarter losses came over across the board tape I believe late one afternoon in early February. I can't remember whether it was the 4th or the 5th. At that time Jack Vogel and I discussed the news.

"Q Did you have no inkling prior to that that there were going to be losses in the fourth quarter?

"A None what -- we had no inkling -- no. We had no inkling whatsoever there were going to be any losses. The only thing that we knew was O'Herron's earlier statement in September that it looked like the Railroad would be operating in the black."

Now I ask you, Mr. Bock, was any of that information which I have just read to you from Mr. Wilson's testimony and Exhibits F-2 and F-20. brought to your attention prior to your purchase of March 16 or at any time thereafter by Goldman, Sachs?

A No, it was not.

Q I ask you whether you learned of such information from any other source prior to your purchase on March 16, 1970, or at any other time before the commencement of this lawsuit?

A I did not.

THE COURT: Wait a second. I don't understand. F-2 refers to something that was appearing in the morning newspaper. What is the relevance of that to your line of questioning?

MR. STITT: If I may connect it up, your Honor, I believe I can. I certainly don't wish to give that impression to the Court.

THE COURT: That's the impression I have.

MR. STITT: I am sorry, your Honor.

Q I ask you, Mr. Bock, did the fact that these losses had come to Goldman, Sachs as a surprise come to your attention prior to March 16, 1970, or any time thereafter until the commencement of this lawsuit?

A Yes, it would have great significance to me --

MR. PIEL: He hasn't been asked that question yet. That's the next question.

(Record read.)

A It did not.

THE COURT: You mean the surprise to Goldman, Sachs?

MR. STITT: Yes, sir.

Q I would ask you the same question with regard to the apparent contradiction between these losses and Mr.

O'Herron's prediction of a fourth quarter in the black, did that come to your attention?

MR. PIEL: Objection to the formof the question.

THE COURT: Sustained. Did Goldman, Sachs ever tell you about their telephone call with O'Herron?

THE WITNESS: No, they did not, sir.

THE COURT: They anticipated a small loss in the third quarter, but the fourth quarter would be in the black?

THE WITNESS: No, they did not tell me that.

Q I ask you, Mr. Bock, whether in your opinion, whether a reasonably prudent investor would have attached importance or significance to this information in determining whether to purchase Penn Central Transportation Company commercial paper on March 16, 1970?

MR. PIEL: Objection, your Honor.

THE COURT: That is the conclusion for me to determine, not for the witness. You can ask him whether he would have bought it if he had known it.

Q I ask you that question, Mr. Bock. Would you have bought this paper --

MR. PIEL: I am going to object to that one, too, your Honor, but let's have it in the record.

THE COURT: All right. If this information had been brought to your attention, would you have purchased the paper?

MR. PIEL: May I interpose my objection to that question, your Honor, because it goes to a central point of law in this case. The question as to the duty of disclosure and the materiality of matters to be disclosed depends on the Court's determination from all the evidence --

THE COURT: Whether a prudent investor would or would not. The Court of Appeals said two weeks ago in the second sentence of 10(b)(5) you don't have to show reliance.

MR. PIEL: That is true, but the test under 12(2), which is his main test, and under 10(b) also, is a test that is to be applied in the light of the normal expectations of the marketplace, the prudent and sophisticated investor in the position of this plaintiff, and not what this plaintiff says argumentatively on the witness stand he would or would not have done.

THE COURT: How do I put myself in the position of the reasonably prudent investor unless somebody tells me what a reasonably prudent investor would do? I don't have any money so I don't buy these things. How do I know what a reasonably prudent investor would do, unless somebody tells me from the witness stand what he would do?

MR. PIEL: He shouldn't tell you in a conclusory way, your Honor. When you have all the evidence about what this man knew and didn't know and what he expected to be told and was or was not told --

THE COURT: That's my question to him. Objection overruled.

MR. PIEL: That's different from his own opinion of what he would have done.

THE COURT: Objection overruled.

Q Would you answer the question, Mr. Bock?

(Record read.)

THE WITNESS: The answer is I would not have purchased the paper if the information had been brought to my attention.

Q Would you give us your reasons, Mr. Bock?

THE COURT: I don't think he has to do that. The record speaks for itself. Mr. O'Herron is quoted here as saying a small loss in the third quarter and in the black in the fourth quarter, yet at the end of the year they must have done worse than that.

Q Mr. Bock, I am now going to ask you whether prior to the Franklin's purchase of March 16 or at any time thereafter Goldman, Sachs disclosed to you the following information to which I will draw your attention from documents in evidence. First, Exhibit F-2, the blue sheet of Mr. Wilson previously referred to --

THE COURT: Pardon me. I can understand the implications of F-20, but I fail to understand the implications of F-2. This is information that appeared in the general newspapers. Is this witness saying that if he had known they had lost $56,000,000 he wouldn't have purchased the commercial paper?

MR. STITT: I did not so understand the witness's testimony, your Honor. I believe if there is any doubt I will ask another series of questions.

THE COURT: You say was he ever told the information that Goldman, Sachs was surprised at this. What difference would that make? Suppose they were surprised. Do you still think a reasonably prudent investor would buy commercial paper of an outfit that had lost $56,000,000 in the year 1969?

MR. STITT: I will ask the witness to address himself to that question of surprise, your Honor.

THE WITNESS: The element of surprise to me is certainly indicative that Goldman, Sachs was not on top of the situation, that they hadn't done their homework.

THE COURT: What does that have to do with your purchase of this piece of commercial paper six weeks after you knew that the Penn Central had lost $56,000,000 the year before?

THE WITNESS: Because they had closer information than was available in the newspaper.

THE COURT: What closer information do you need than losing $56,000,000? Do you continue buying commercial paper of an outfit that has lost $56,000,000 the previous year?

THE WITNESS: No, sir, you don't continue to buy it.

THE COURT: You did, didn't you? You bought it March 16 after the whole world knew they had lost $56,000,000.

Q Would you address yourself to the contradiction of the fourth quarter loss and Mr. O'Herron's prediction of a fourth quarter profit in the black?

MR. PIEL: I object to the form of the question.

THE COURT: Sustained.

MR. PIEL: He is inviting a speech --

THE COURT: Put a specific question to him. I have already stated on the record, Mr. Stitt, that I understand the significance of F-20. I don't understand the significance of F-2.

Q Mr. Bock, prior to Franklin's purchase of March 1 or at any time thereafter, did Goldman, Sachs disclose to you the following items of information, and I will commence first, your Honor, with the Exhibit F-2, the blue sheet of Mr. Wilson under date of February 5, 1970, second paragraph:

"I told him," that is Wilson telling O'Herron, "it was our judgment that this news (referring to)" --

THE COURT: I am sorry. I don't have the place yet. Page 1 of this?

MR. STITT: Page 1, yes, sir.

THE COURT: What portion?

MR. STITT: Middle paragraph.

THE COURT: I see. I have it now.

Q "that this news will have an adverse effect on their sale of commercial paper and we may not be able to keep out $200,000,000 of their notes. I said the most important thing they could do is to get another $100,000,000 in standby lines to back up their commercial paper and that some of these lines should be swing lines or demand lines. He said he did not think with the banks as tight as they are they could get $100,000,000 in standby lines."

Continuing over to the second page, in the last paragraph, beginning with the words "To summarize our position."

"We have asked them to set up $100,000,000 in new lines so that they will have 100 per cent line coverage."

Continuing now with Exhibit F-3, a blue sheet by Mr. Wilson under date of February 6, 1970, as introductory matter I will read the first sentence:

"GLS and I had lunch today with Dave Bevan, executive vice-president and chairman of the finance committee, John O'Herron, financial vice-president, and Bob Loder, president."

This referred to discussions at that meeting. Continuing with the third paragraph on the firstpage of Exhibit F-3:

"We then got into a discussion of commercial paper and we told them that if they didn't get the $100,000,000 more in lines to bring them up to 100 per cent coverage, we thought their present level of $200,000,000 would run down by $50 to $100,000,000. We stressed the importance of their converting from $50,000,000 of commercial paper back-up lines to demand lines."

Continuing with the last line of this page:

"Both Dave Bevan and John O'Herron responded to our ideas by saying they did not feel they could get $100,000,000 in bank lines at this time."

THE COURT: I do not understand the difference between back-up line and demand line. Is there a difference?

THE WITNESS: A back-up line in my opinion would be tantamount to what I had reference to before, that if the company did not have sufficient cash resources to pay off the commercial paper obligations as of a particular date, they would have the back-up lines to resort to. However, standby line could be in the form of a revolving credit.

THE COURT: What about a demand line?

THE WITNESS: Demand line would be that they would provide credit upon demand by the corporation. It would be a demand loan rather than a term loan.

THE COURT: Maybe some witness from the defendant will explain the difference to me, but it seems to me if you have a back-up line for $50,000,000 it is just as good as a demand line for the same 50,000,000, but somebody will have to explain it to me. Go ahead.

MR. STITT: Your Honor, I now call attention to -- I hope I have the correct numbered paragraph of the stipulated facts in the pretrial order, now paragraph 24, but I may be off a digit, I believe the fact --

THE COURT: Page?

MR. STITT: Page 131 of the revision, your Honor, paragraph 24, at the bottom of that page, which states as follows:

> "Penn Central did not have more than 50 per cent bank line coverage for its commercial paper at any time after November, 1969."

Q I ask you, Mr. Bock, was this information which I have just read from the blue sheets, Exhibits F-2 and F-3, and the stipulated facts,paragraph 24, disclosed to you by Goldman, Sachs prior to your purchase of March 16 or at any time thereafter by Goldman, Sachs?

A That information was not disclosed to me by Goldman, Sachs.

Q Did you learn of that information from any other source prior to March 16, 1970?

A I did not.

Q Did you learn of that information at any time prior to the commencement of this lawsuit?

A I did not.

Q If such information had been disclosed to you on March 16, 1970, would you have bought that Penn Central commercial paper note?

MR. PIEL: Same objection, your Honor.

THE COURT: Same ruling.

Q Answer the question.

A I would not have bought the paper.

Q Would you give us your reasons, please?

A As I mentioned to the Court before, we would like to see 100 per cent coverage of any outstanding commercial paper. This was not the case in the Penn Central situation at the time of my purchase. It also was indicative to me of the deteriorating credit position of the corporation, that it was unable to obtain additional bank line coverage. At least there was a reluctance on the part of commercial banks to extend credit to the company.

Q Would you have attached any significance to Goldman, Sachs' request that this additional coverage be obtained?

A Yes. I would address significance to that fact.

Q What significance?

A It would indicate to me that Goldman, Sachs had some concern over the financial stability and financial position of the corporation.

Q Mr. Bock, I am now going to ask you whether prior to Franklin's purchase of March 16 or at any time thereafter Goldman, Sachs disclosed to you the following items of information which I will now draw to your attention from documents in evidence. First, Exhibit F-2 in evidence, Mr. Wilson's blue sheet of February 5, 1970, concerning his conversation or conversations with Mr. O'Herron on that date. In the first paragraph, approximately eight lines down from the top:

"I," that is Wilson, "asked what their cash picture looked like for the first six months of this year. He," that is Mr. O'Herron, "said it is very tight."

Continuing with the Exhibit F-3, the blue sheet of Mr. Wilson of February 6, 1970, beginning on the first page, second paragraph, the first sentence:

> "The Railroad needs an additional $170,000,000 for 1970. Adding in the $56,000,000 anticipated loss, their requirements this year are $226,000,000."

I ask you, Mr. Bock, if that information was brought to your attention by Goldman, Sachs prior to your purchase of March 16, 1970?

A That information was not disclosed to me by Goldman, Sachs prior to the purchase.

Q Was it brought to your attention by Goldman, Sachs at any time thereafter?

A No, it was not.

Q Did you learn of that information from any other source prior to March 16?

A I did not.

Q Did you learn of that information from any other source prior to the commencement of this lawsuit?

A I did not.

Q If that information which I have just read to you had been brought to your attention on March 16, would you have purchased this paper?

MR. PIEL: Objection.

THE COURT: Overruled.

A I would have not bought the paper on March 16 had I had that information.

Q Would you give us your reasons, please?

A The evidence clearly indicates to me that the company was in need in the future of substantial financial assistance and that it was headed for a cash crisis of major proportions.

Q Are you familiar with the money market as of the spring of 1970?

A Yes, I was familiar with it and I am now.

Q What was it?

A Short-term interest rates and certainly commercial paper had peaked in January of 1970 and beginning the first part of February it was on its decline, followed by a very rapid decline from about June to the year-end of 1970, very significant decline. The rates of Treasury Bills, bankers' acceptances and even commercial bank borrowing rates were declining.

Q Is it your testimony that this was a period of tight money?

A Definitely it was a tight-money period.

THE COURT: Wait, wait. When was the tight-money period?

Q During the spring and late winter of 1970?

A That's right. The late winter of 1969 --

Q Dash '70?

A And the first part of 1970, very tight money position.

Q Would the projection of another $56,000,000 loss for the year 1970 have any significance for you?

A Yes, it would have great significance.

Q Would you tell us of that, please?

A That would have indicated to me a continuing pressure on the company which would augment -- not augment, but which would aggravate their financial situation and need for financing.

Q The tight-cash position, the very tight-cash position as referred to by Mr. Wilson, would that have had significance?

A It would have had definite significance to me.

Q Would you tell us why?

A I can only repeat that it indicated to me a great concern on the part of the financial management of the Penn

Central that it was going to be in a real bind for short-term money.

Q Mr. Bock, I am now going to ask you whether prior to your purchase of March 16, 1970, or at any other time thereafter did Goldman, Sachs disclose to you the following items of information, and once again I will read from documents in evidence, commencing with Exhibit F-2, your Honor, Mr. Wilson's blue sheet of February 5, 1970, specifically beginning at paragraph 2:

"I told him," that is Wilson telling O'Herron, "Goldman, Sachs was going to continue their paper" --

THE COURT: Wait, wait. You are reading from Exhibit F-2?

MR. STITT: Yes, sir.

THE COURT: Second paragraph?

MR. STITT: Second paragraph, about seven or eight lines down. Maybe nine lines down.

THE COURT: "I toldhim Goldman, Sachs was going to continue"?

MR. STITT: That's it.

Q "I told him Goldman, Sachs was going to continue to offer their paper, not only the $150,510,000 in inventory, but also the maturities as they came due. When I said that our procedures in the future would probably be set up so we handle their paper only on a 'tap' issue basis where Goldman, Sachs did not inventory their notes, he said this was something he would have to refer to Dave Bevan, chairman of the finance committee, and 'he and Gus Levy can talk about that.'"

Continuing, beginning with the second sentence of the immediately following paragraph:

"In the past he told us he would be willing to take us out of our position in Penn Central and put it in the revolving credit agreement if we asked. I asked if we were to request he do that on the $15,510,000 Penn Central notes we now owned, would he. He said he didn't think he wanted to do that today as the New York banks he is going to see this afternoon to set up the additional $50,000,000 five-month lines are the same ones he would have to contact today, and he didn't feel this was a very good strategy. I concurred with his reasoning. He then said he talked with some of his banks,"

and I believe this refers to a subsequent conversation the same day --

MR. PIEL: Excuse me. I don't think we should interject assumptions which are not in evidence.

MR. STITT: I apologize, your Honor. I will continue and I ask that I be forgiven or excused for my interruption.

Q Continuing after the word "strategy":

"I concurred with his reasoning. He then said he had talked with some of his banks who are in the $50,000,000 back-up lines for paper and was prepared to buy back $10,000,000 of their notes from us Monday, February 9, to which I agreed. They have $2.9 million maturing today which we sold this morning with an additional $1.9 million which we took out of inventory, reducing our position to $14,410,000.

"I made no commitment on the $4 million maturing tomorrow as John will be in my office tomorrow morning and we can talk about the maturities, swing lines, new lines and their financing requirements at that time."

The last paragraph of the last page, about three or four lines down:

"They know we are going to request swing lines so we can operate on a 'tap' issue basis."

Proceeding now to the green sheet of Exhibit F-3, your Honor, this would be the green sheet of February 6, 1970, luncheon meeting among Levy, Bevan, Wilson, O'Herron and Loder, that date, I would pick up three lines from the bottom of the first page in the last paragraph, the following sentence:

> "We said that in the future we did not feel we could inventory as much of the Penn Central as we had in the past and that Goldman, Sachs felt that $5,000,000 at any one time would be our limit."

Continuing with F-4, your Honor, the green sheet -- excuse me, the blue sheet, I am sorry, the blue sheet of February 12, 1970, particularly the second sentence of that memorandum of Mr. Wilson's:

> "On Monday" -- this is dated February 12, 1970 -- they bought back from our position approximately $10,000,000 Penn Central notes and put it in their back-up lines."

Mr. Piel has brought to my attention, your Honor, that there is another blue sheet, I believe one by Mr. Tripi of February 12. The record should be quite clear that the one I just referred to is a blue sheet of Mr. Wilson of Februry 12, 1970, and it is Exhibit F-4 in evidence.

THE COURT: We will have to take a recess.

(Recess.)

BY MR. STITT:

Q Continuing with Exhibit F-5 in evidence, the blue sheet of Mr. Wilson of March 23, 1970, I draw attention to the following statements by Mr. Wilson in connection with a conversation he had with Mr. O'Herron.

So the record is clear, I am limiting myself to those two sentences for which this exhibit was permitted yesterday, and they begin approximately 11 lines down from the top of the page:

> "Regarding the amount of Penn Central Transportation's commercial paper Goldman, Sachs & Co. was prepared to inventory at any one time, his recollection," -- that is O'Herron's, "of the February 6 luncheon was that no decision had been reached and that both the $5,000,000 and the $10,000,000 figures were still under consideration. I told them that was not my understanding and that in fact Goldman,Sachs & Co. felt that a $5,000,000 ceiling was appropriate until such time as they obtain 100 per cent line coverage, completed some of these long-term financings and started to reduce the operating losses."

I ask you, Mr. Bock, whether the information that I have just read to you, from these various green sheets, received in evidence as F-2, F-3, F-4 and F-5, was brought to your attention by Goldman, Sachs prior to the purchase of March 16, 1970?

A Such information was not brought to my attention by Goldman, Sachs prior to the purchase.

Q Was it brought to your attention through any other source prior to the purchase of March 16, 1970?

A It was not.

Q Did you learn of this information from any source prior to the commencement of this lawsuit?

A I did not.

Q If such information had been disclosed to you prior to your purchase of March 16, 1970, would you have bought the Penn Central commercial paper note on that date?

A I would not have bought it.

MR. PIEL: Objection.

THE COURT: Overruled.

Q Would you give us your reasons, please?

A I would not have bought the paper on March 16. The significance of what you read to me indicates a feeling on the part of Goldman, Sachs that they wished to reduce their exposure in the marketplace, reduce their inventory. My suspicion in this regard would be fortified by the fact that only a few days prior means was made available of the large losses that the Railroad Company had sustained, and that the future was not going to be as wholesome as we had reason to expect.

Q Are you suggesting that the timing of this decision had significance for you?

A It would have --

MR. PIEL: Objection. Leading.

THE COURT: Sustained. If he reframes the question, he gets the same answer.

Q Mr. Bock, I am going to ask you whether prior to Franklin's purchase of March 16, 1970, whether the following items of information were brought to your attention by Goldman, Sachs and whether you learned of this information from any other source. Calling attention to Exhibit F-1 in evidence, this is a green sheet by Jack A. Vogel --

MR. PIEL: You mean blue, don't you?

Q I am terribly sorry, it is a blue sheet, and I thank my adversary for that correction, a blue sheet of Jack A. Vogel, the vice-president of the credit department of the commercial paper department of Goldman, Sachs, vice-president in charge of that department, and it reads as follows, under date of February 5, 1970:

> "Alan Rogers of NCO called me today to express concern over the sharply reduced earnings announced in the newspaper today. He asked if we were con-

tinuing to sell the company's notes and asked whether I felt that Penn Central had sufficient resources which could be converted to cash to take down debt if necessary.

"I said that Goldman, Sachs was continuing to sell commercial paper notes of Penn Central Transportation Company. In answer to Question No: 2, I suggested that the company has a number of valuable properties and securities and that I was certain something could be worked outshould it ever become necessary.

"Alan said that as a result of my comments he would continue to carry Penn Central Transportation Company as a prime name."

Continuing with Exhibit F-2, Mr. Wilson's blue sheet of February 6, 1970, the second page of this two-page document -- I am sorry, your Honor, I apologize for the error. I intended to call attention to Exhibit F-3, which is the memorandum of Mr. Wilson concerning the luncheon conference on February 6, 1970, among himself, Mr. Levy, Mr. Bevan, Mr. O'Herron and Mr. Loder.

THE COURT: What is that exhibit number?

MR. STITT: This is Exhibit F-3.

Q I call attention to page 2 in the continued paragraph at the top. I would read from the final sentence of that paragraph, beginning three lines up from the bottom:

> "I also explained Alan Rogers' conversation with Jack Vogel and that Alan's feeling was that as long as Goldman, Sachs was going to continue to handle Penn Central's commercial paper, he would keep the 'Prime' waiting."

I ask you, Mr. Bock, whether the information I have just read to you from Exhibits F-1 and F-3 was brought to your attention prior to your purchase of March 16, 1970, by Goldman, Sachs or anyone else?

A It was not brought to my attention by Goldman, Sachs or anyone else prior to the purchase on March 16.

Q Did you learn of this information at any subsequent time from Goldman, Sachs or any other source prior to the commencement of this suit?

A I did not.

Q May I ask you, Mr. Bock, if such information had been brought to your attention prior to March 16, whether you would have purchased the Penn Central Transportation Company note on that date?

MR. PIEL: Objection.

THE COURT: Overruled.

A I would not have -- I would not have purchased the paper.

THE COURT: I don't understand this. You mean that Mr. Rogers of NCO was going to continue to carry this prime, is that what you are talking about?

MR. PIEL: If your Honor please, your Honor has ruled that it is not admissible for that purpose. He must mean that Mr. Rogers said something.

THE COURT: I don't get the significance of it.

MR. STITT: The question calls for the significance of the statements attributed to NCO by Goldman, Sachs in their blue sheets. This is the independent rating agency, the only one established by the Banking Board --

THE COURT: Didn't we raise that yesterday, as to whether Rogers' statement could come in?

MR. PIEL: Your Honor, it can't come in for the truth of the matter asserted, so what he is trying to ask the witness, I think, is did they tell you that there was a conversation with Alan Rogers in which he said something. It may not have been true.

THE COURT: I don't see its relevance or impact to this.

MR. STITT: I will proceed, your Honor, to the next series of questions.

Q Mr. Bock, are you familiar with the firm of

Brown Brothers,Harriman & Co.?

A Yes, I am

Q What sort of firm is it?

A In my opinion Brown Brothers, Harriman is a top drawer investment banker, doing an international business and business in all phases of investment banking and investment. A very fine old house, formed in 1818, long history of railroad financing, with a very interesting period when railroad development was occurring in the country.

THE COURT: You are not quoting them as being the epitomy of high-class financing in that railroad era, are you?

THE WITNESS: No, sir.

THE COURT: They were as thieving as anybody else was, if I read the books correctly.

THE WITNESS: No, sir. I was trying to indicate that they were in the forefront of financing.

THE COURT: Let's talk about now, 1970, not 1818. None of us were even thought of then.

Q What was their reputation in 1970, Mr. Bock?

A Their reputation in 1970 was one of high quality, in my mind, people who were astute and doing a very fine job in their business.

Q Did their judgments and decisions command respect within the financial community?

A Yes, I would say that. It certainly did in my opinion. I would respect any action that they would take.

Q Mr. Bock, I am now going to ask you -- prior to putting the question to Mr.Bock, your Honor, I am just going to call attention to Plaintiff's Exhibit F-21, which I believe is in evidence, and I don't know whether this would be called a blue sheet, but it is Exhibit F-21, and it has a notation under date of August 7, 1968 --

MR. PIEL: Just for clarity in the record, may I say it is not a blue sheet. It comes out of the credit file, but it is not on the blue sheet that denotes a contact report with an investor, which is what the blue sheet signifies.

It is a white sheet and therefore is not a restricted sheet in terms of possibly containing business confidences. But it does come out of the credit file on the Penn Central.

MR. STITT: The following statement which is background:

"Brown Brothers, Harriman - Mr. Guilshan - We hold available," this is under Penn Central Company, "for the company's use an open line which stands until 1973. This line provides the company with a

$50,000,000 revolving credit for the exclusive use of banking their commercial paper outstanding. Our share of this $50,000,000 revolving credit is $2,000,000. As of this time the company has not borrowed from us. We have a high regard for the company and its management."

THE COURT: When you say the company, you mean Brown Brothers has an open line?

MR. STITT: Yes, sir.

THE COURT: With Goldman, Sachs?

MR. STITT: No, sir, with Penn Central. It is a participation in one of the bank lines of credit representing the 50 per cent which was referred to earlier.

Q Mr. Bock, I am going to ask you whether prior to your purchase on March 16, 1970, Goldman, Sachs or anyone else had drawn to your attention the following items of information --

THE COURT: I am sorry, I still don't understand what this statement means. Explain it to me, please. "We hold," that is Goldman, Sachs? The company's use --

MR. STITT: This is a contact by Goldman, Sachs with Brown Brothers on that date with Mr. Guilshan of that firm, and it is Mr. Guilshan who is disclosing the information that follows his name.

THE COURT: That is Brown Brothers hold available for Penn $50,000,000 --

MR. STITT: No, your Honor. There is a $50,000,000 line of credit, and of that line --

THE COURT: Brown Brothers has two of the fifty, is that what that sentence means?

MR. STITT: That's right.

MR. PIEL: I might say, your Honor, there isn't any dispute about it, this document is what is called a bank check. When Goldman, Sachs checks around with banks that do business with Penn Central to see what they said about them that day, in the course of that they contacted Brown Brothers. This is what they told them about their relations with Penn Central.

THE COURT: Now that I understand this, what does it have to do with our lawsuit?

MR. STITT: Your Honor, I will answer that question --

THE COURT: Ask the witness to tell me.

Q Now, Mr. Bock, I am going to ask you whether prior to your purchase of March 16, 1970, Goldman, Sachs or anyone else had disclosed to you or if you had learned from any source as of that date the following items of information which I will now read from the blue sheet, first of all, your Honor, F-3, which is Mr. Wilson's summary of the luncheon meeting on February 6, 1970, to which I have just referred, among Wilson, Levy, Bevan,O'Herron and Loder.

I quote, beginning on page 2, your Honor, approximately four lines down from the top, first continued paragraph:

> "I told him about a large New York firm that has bought as much as 15 per cent of their outstandings and which only yesterday temporarily removed their name from the approved list. We are going to try to set up an appointment for John O'Herron to visit the firm."

Continuing with the blue sheet, your Honor, for February 12, 1970, this was Exhibit F-4, and it is a summary of a conversation between Mr. Wilson and Mr. O'Herron on that date, as summarized by Mr. Wilson in his blue sheet, February 12:

> "I told John that the large investor who had temporarily taken their name off their approved list did not wish to meet with him to review the 1969 figures as they felt it would be awkward. John O'Herron guessed that the account we are referring to is Brown Brothers and that he has agreed not to make

any out-of-the-ordinary reviews with them so as not to jeopardize our relationship with Brown Brothers."

Now, your Honor, I would refer to the following testimony by Mr. Wilson at page 631 of his deposition before trial which was given on April 14, 1972, and what I would propose to read are lines 5 through 11 of the questions and answers on that page:

"Q Do you know of any time when Brown Brothers Harriman put Penn Central back on their approved list for purchase subsequent to that date?

"A I have no knowledge of that.

"Q Do you have any knowledge of Brown Brothers having done so?

"A I do not."

Mr. Bock, I am going to ask you whether the information that I have just read to you from these blue sheets, F-2, F-3, F-4 and the testimony by Mr. Wilson at page 631, whether that was brought to your attention prior to your purchase of this paper on March 16, 1970?

A No, that information was not brought to my attention prior to the purchase by Goldman, Sachs.

Q Did you have that information or any of it from any other source prior to March 16?

A I did not.

Q Did you acquire this informationat any time prior to the commencement of this litigation?

A I did not.

Q I ask you, Mr. Bock, if this information had been brought to your attention whether you would have bought this Penn Central note on March 16?

A I would not have bought the $500,000 Penn Central note on March 16.

MR. PIEL: May the record note my objection.

THE COURT: Same ruling.

Q Would you state your reasons, Mr. Bock?

A The unwillingness of Brown Brothers to continue either in the credit line or to put the commercial paper on their approved list is indicative to me of lack of confidence in the company's affairs and the company itself.

Q I want to stop you right there. There is no evidence before you that they discontinued the credit line. I want you to assume that the line of credit remained open and just address yourself to their decision to remove Penn Central from their list on February 5.

A The removal of Penn Central from the list would h-ve been sufficient signal to me to be careful, and I would not have bought the paper.

MR. STITT: Your Honor, the next two items of questions will be based on information not from the files of Goldman, Sachs, but information which the plaintiff contends Goldman, Sachs could have obtained in the exercise of reasonable care prior to March 16, 1970. I don't make this by way of argument, but simply as clarification for the record. Your Honor, I will be referring to Exhibits F-76, F-77 and F-78.

These are memoranda of Mr. Underhill to Mr. Saunders with copies to Mr. Gorman, Bevan, Flannery, Large, O'Herron, Coe and Hill under the respective dates of February 6, 1970, February 19, 1970, and March 6, 1970.

Q Mr. Bock, I am going to draw your attention to the second page, the attachment to Mr. Underhill's memorandum of February 6, 1970, Exhibit F-76 in evidence, and the page that I am referring to is labeled "Penn Central First-Quarter Earnings," the dollars indicated are in thousands, but I will try to translate, your Honor, and the first column headed under "First-Quarter Earnings, 1970, 2/9/70," which I take to be February 9, 1970, forecast, and the information that I would draw the witness's attention to and the Court's is set forth in perhaps nine lines down, it may be ten, under "Operating Income," a loss of $66,272,000.

I ask you, Mr. Bock, whether this projected loss as set forth in this memorandum of $66,272,000 was brought to your attention by anyone prior to your purchase on March 16, 1970?

A No, it was not.

MR. PIEL: When I rise to make an objection, would you give me an opportunity, please?

Your Honor, I have an objection on the ground that this is offered on the predicate of a fact that is not in evidence and cannot be proved, namely that this kind of an internal bank document or the information therein, which is obviously of a highly confidential managerial nature, could possibly be available to Goldman, Sachs.

THE COURT: This is something he is going to have to prove.

MR. PIEL: Your Honor is taking this subject to connec[illegible]n?

THE COURT: I am.

MR. STITT: I would draw attention, just so the record will be clear, to, among other things, the testimony given by Mr. Wilson at page 1910 of the Welch transcript, among the designations which were brought to the attention of the Court before commencement of this trial.

THE COURT: That is what you say is your connection of proof?

MR. STITT: That is part of it, your Honor.

THE COURT: I will take it subject to connection.

BY MR. STITT:

Q Mr. Bock, I now draw to your attention Exhibit F-77 in evidence, also the second page headed "First-Quarter Earnings," dollars in thousands, 1970, February 23, 1970, forecast, again referring to Penn Central Transportation Company, and line 11, under "Operating Income," February 23, 1970, forecast, loss of $71,835,000.

I ask you whether that loss projection of Penn Central for the first-quarter earnings for 1970 was brought to your attention or whether you learned of it from any source when you bought the paper on March 16, 1970?

A That information was not disclosed to me by Goldman, Sachs prior to the purchase nor did I hear of it or know of it from any other source.

Q Mr. Bock, I draw your attention to Exhibit F-78 in evidence, which is Mr. Underhill's memorandum of March 6, 1970, and I draw attention to the second page labeled "First-Quarter, 1970," March 9, 1970, forecast, and I draw attention to the portion labeled "Penn Central Transportation Co.", line 8, operating income, projected loss as of this date of $72,300,000.

I ask you whether that information concerning that projected loss was known to you or had been brought to your attention prior to your making this purchase of March 16, 1970?

A That information was not known to me nor was it brought to my attention prior to my purchase of March 16, 1970.

Q Were these loss projections as set forth in Exhibits F-76, F-77 and F-78 brought to your attention at any time prior to the commencement of this lawsuit?

A No, it was not.

Q I ask you, Mr. Bock, if that information had been brought to your attention on March 16, 1970, whether you would have bought the paper on that date?

MR. PIEL: Objection.

THE COURT: Overruled.

A If I had known the information, I would not have bought the paper on March 16.

Q Would you give us your reasons, please?

A The reasons being, namely, that continued operating losses of massive proportions appeared to be in prospect, casting great doubt on the company's ability to pay off its commercial paper at maturity date.

Q Would you have made any relationship between these continued losses as set forth in these projections and the management prediction of turnaround as set forth in Exhibit F-20, Mr. Wilson's memorandum of I believe October, 1969?

A Yes, it would cast great doubt in my mind over the calibre of the management, the management's capabilities.

Q That is to deal with their financial problems?

A That is right.

Q Mr. Bock -- this is the second question in this line, your Honor -- I am going to draw your attention to Exhibit F-80, which was received on consent yesterday, it is an excerpt from the Penn Central annual report of some five pages of financial statements and notes thereto, including the last page, the cover letter of the firm of Peat, Marwick, Mitchell & Co., dated March 12, 1970, and anticipating my adversary, I also draw attention, as I did, to Mr. Wilson's testimony at page 1910 of the Welch transcript which is before the Court --

THE COURT: I will take it subject to connection. What do you want me to look at here?

Q Mr. Bock, I am going to draw your attention to page -- roughly, the third page of this exhibit, your Honor, maybe the fourth --

MR. PIEL: What is the number of the page in the annual report?

MR. STITT: This is under Note 7 to the financial statements, Mr. Piel. And not having the full report in my hand --

MR. PIEL: Long-term debt?

MR. STITT: Yes. Specifically, your Honor, I will call attention to the last paragraph of Note 7 which appears immediately before Note 8. It reads as follows:

> "Substantially all investments and properties included in the consolidated balance sheet and substantially all the properties of the Transportation Company, together with certain of its investments, principally Pennsylvania Company (a subsidiary which holds the stock of Norfolk & Western Railway Company and of the principal real estate and other non-railroad subsidiaries) have been pledged as securities for loans or are otherwise restricted under indentures and loan agreements."

Q I ask you, Mr. Bock, whether that statement in the financial notes of the Penn Central annual report had been brought to your attention or whether that information had been brought to your attention prior to your purchase on March 16?

A No, it was not brought to my attention by Goldman, Sachs prior to my purchase of March 16.

Q Had you learned of that information from any other source prior to that date?

A I did not.

Q I ask you, Mr. Bock, if this information had been brought to your attention on March 16, would you have purchased the note on that date?

MR. PIEL: Objection.

A I would not have bought the paper on March 16 had I known of this information.

THE COURT: Overruled.

Q Would you give us your reasoning, please?

A This is very disturbing information, or would have been at that time of purchase, simply it indicated to me the extreme borrowing that the company had gone to. It had pledged its valuable assets. It was borrowing up to the hilt. It was striving to keep afloat and using all lines of endeavor to raise short-term money.

Q Would you have made any relationship between this information and the information that I read to you previously from the blue sheets concerning the railroad's apparent inability to increase its bank lines from 50 to 100 per cent?

MR. PIEL: I don't understand the question.

May I have it read, please?

THE COURT: He said something about the inability to raise it. I don't think there is a definitive statement in those exhibits that they could not have raised it.

MR. STITT: I will withdraw the question, your Honor, and proceed to something else.

Q Mr. Bock, I am now going to ask you whether this information was brought to your attention or whether you learned of it from any source prior to your purchase of March 16, 1970. So the record is clear, I will show you this ICC report, Exhibit F-48, your Honor, and ask you if you had -- have you examined that document previously at my request?

A No, I have not.

Q Would you look at it now, please?

(Pause.)

A Yes, Mr. Stitt?

Q The record should show that is the ICC report of November 6, 1969. I ask you whether that report had come to your attention at any time prior to your purchase of March 16, 1970?

A No, it did not.

Q I show you a document which is labeled Defendants'

Exhibit EK, a clipping, your Honor, from the journal --

THE COURT: Just a second. You have given me Exhibit 48. You are referring to the whole Exhibit 48 as having a bearing on this?

MR. STITT: No, sir, I will be zeroing in on it.

THE COURT: Let's zero in on it now.

Q Mr. Bock, I am going to call your attention to the following statement in the ICC report at page 4 and these two sentences commencing at the beginning of the first complete paragraph on that page, beginning with the word "applicants." It reads as follows:

"Applicant," and the record should show that this is Penn Central Transportation --

MR. PIEL: Mr. Stitt, will you please get your voice up?

Q "Applicant feels that long-term financing at the present time is not feasible due to the tight-money situation. Although we are sympathetic to applicant's problem, short-term financing has traditionally been relied upon to finance short-term needs and is not normally regarded as a proper source for long-term financing of the capital expenditures or for refinancing of maturing long-term debt."

I ask you, Mr. Bock, whether that information had been brought to your attention prior to your purchase of March 16, 1970?

A No, it had not been brought to my attention prior to the purchase.

THE COURT: What is in there that should have been brought to his attention? This is the attitude of the ICC, isn't it?

MR. STITT: Yes. I am referring to the information, your Honor, that the use of short-term investment, such as commercial paper, for long-term purposes --

THE COURT: From what you have read I don't find anything to that effect. The ICC -- this is what the ICC says, but I don't know that that's the fact here.

MR. STITT: Your Honor, having got the witness's answer that it was not brought to his attention, I will --

THE COURT: I am telling you it has no relevance to my determination of the issues in this case, unless you do something more with it. That sentence by itself --

MR. STITT: Let me continue with the rest of the paragraph:

> "As of June 30, 1969, applicant had a deficit working capital situation which can be expected to worsen, if reliance on short-term financing is increased. The exhausting of short-term credit to

refinance maturing long-term debt or to finance long-term capital expenditures would expose the carrier to a serious crisis in the event of an economic squeeze, at which time the carrier may require short-term financing for traditional use. We are, therefore, concerned about the use of short-term financing for long-term purposes and feel that where necessary it should be resorted to cautiously."

MR. PIEL: Would you perhaps like to read the next paragraph?

THE COURT: Read the next sentence.

MR. STITT: "On the whole, applicant is in a strong financial condition, and in view of the present tight-money market and applicant's stated intent to negotiate long-term financing as soon as it is feasible, we conclude that the application should be approved, subject to a condition restricting the issuance of such notes to a period not exceeding two years from the date the order herein is served."

Would you like me to read further?

MR. PIEL: That's fine.

THE COURT: That's enough. Now ask the witness whether if he read all that he would have bought it or whether it would have had any influence on him.

Q If you had all of that information before you, Mr. Bock, on March 16, would you have bought the paper on that date?

MR. PIEL: Objection.

THE COURT: Overruled.

A No, I would not have bought the paper. This indicates to me the use of commercial paper of financing for long-term purposes. This is the height of the matter, so far as I am concerned, in the use of commercial paper. It should never be used to fund long-term debt. It should be used for current purposes only.

MR. PIEL: If your Honor please, I think it should be clear on the record that this document does not prove what the money was used for.

THE COURT: I understand that.

MR. STITT: Your Honor, that completes my direct examination of this witness.

THE COURT: Do you want to adjourn for lunch and start your cross after lunch?

MR. PIEL: It is a good time, your Honor.

THE COURT: Okay, a quarter of two.

(Luncheon recess.)

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AFTERNOON SESSION

1.30 P.M.

HARRY H. BOCK, resumed.

CROSS EXAMINATION

BY MR. PIEL:

Q Beginning in 1958, Mr. Bock, when savings banks were permitted by law for the first time to buy commercial paper, you went into that --

THE COURT: What is your problem, Mr. Stitt? You are half-way up for two and a half minutes.

MR. STITT: I apologize, your Honor. I believe my adversary meant to say 1968.

MR.PIEL: I beg your pardon. Thank you.

Q 1968, and Franklin Savings Bank went into this aspect of the short-term money market, the short-term investments, did you and you alone handle all of those transactions for Franklin Savings Bank?

A Yes. I had the sole responsibility for buying commercial paper.

Q And actually did the dealings with the dealers in that connection?

A Handled the whole transaction.

Q You bought many different or several different issuers' paper from Goldman, Sachs, not just Penn Central?

A That is correct.

Q Normally when you called up, you would identify the maturity that you wanted to put your money out to and the amount that you had to invest and then ask the Goldman, Sachs salesman what he had that day, and typically he would mention two or three or more names to you?

A That's correct. Plus I would ask what rate it would be offered at .

Q You knew Goldman, Sachs & Company could be one of the leading investment banking houses in the City here?

A That is true.

Q You knew that it was a full-line financial house, offering many different financial services to issuers?

A I was aware of that.

Q Going back perhaps all the way to the Wharton School when they helped you on some --

A That is correct.

Q They would serve an issuer not only in helping them to issue commercial paper and borrowing in the commercial paper market, but also in arranging underwritings, if they could; is that right?

A That is correct. Across the board, as far as I am concerned.

Q They were members of the stock exchanges and would be happy to do brokerage work for investment accounts of those issuers?

A I understood that.

Q And could assist the issuers in arranging private placements, mergers, acquisitions and other financial transactions?

A That's correct.

Q You knew that?

A I did know that.

Q You expected them to perform in that way to the extent they could for any issuer, right?

A Very much so. Correct.

Q Mr. Bruno took you on a tour of Goldman, Sachs' offices, did he show you the commercial paper operation?

A I don't recall whether or not I saw their commercial paper operation because it is not clear in my mind, but he did show me the office, the salesmen on the telephones and introduced me to one or two people along the way who were in private offices, but I don't recall whether I specifically saw the commercial paper operation.

Q The commercial paper market, like other elements of the short-term money market, operates on a limited number of hours a day, doesnt it?

A Very much so.

Q Do you know what are those hours?

A It would be in my judgment, and I don't know what it was exactly in 1970, but it would be a very limited period of time, probably from 10 to about 12 o'clock in the day. There may be times beyond that period when there may be some trading, but it essentially occurs in the morning, according to my experience.

Q Isn't it a fact, Mr. Bock, that purchases in the short-term money market, including the commercial paper market, are for same-day delivery, normally?

A Not with my experience at the Franklin. We did it next-day delivery and in some cases same-day delivery if we had money in position.

Q You sometimes arranged a purchase for the next day?

A That is true.

Q If you knew you were going to have the money the next day?

A That is true.

Q But that was because you didn't have the money that day; is that right?

A That's correct.

Q If you had it that day, you would want it to go to work right away and not be idle and not earning interest, isn't that right?

A That is right.

Q And typically in the market, investors want as soon as they know they have the money to invest, they want it to start to go to work for them earning interest, they want the same-day closing, right?

A Right.

Q The mechanics of the business really require that the trading by 12 or 12.30, as you indicated, so that these clearances and closings can take place before the banks closed, right?

A We are agreed.

Q Good. Before you went into commercial paper in 1968, what had you done to invest short-term money for the Franklin Savings?

A We were buying commercial bank certificates of deposit, I believe, I think they were availabla at that time. Also we were buying bankers acceptances, and we were keeping deposits with Savings Bank Trust Company on a time basis. They were offering a rate of return with specified maturities.

Q Why did you decide to go into commercial paper?

A Simply for the higher yield that was available in the marketplace.

Q Why was the yield higher on commercial paper than on certificates of deposit and Federal Treasury Bills?

A I would suppose because of the size of the market and demands in the marketplace to place paper of that kind. It would be my natural answer.

Q You mean there is a bigger demand for commercial paper than for certificates of deposit or Treasury Bills?

A No, I don't mean the demand by the buyer. I am talking about the demand for credit via the commercial paper market. Obviously if there is a great demand, the yield has to be there, I mean the yield has to be up vis-a-vis commercial bank certificates of deposit.

Q Is there a close relationship among all these rates from day to day?

A Very much so.

Q They move together?

A Largely so. It is structured inthat fashion, yes.

Q So all of these means of investing short-term money are there equally and simultaneously available to meet needs of borrowers who want to borrow; is that correct?

A That's correct.

Q And to meet the investment needs of investors?

A Correct.

Q So that essentially the difference in rate has to reflect some difference of the marketplace evaluation of the relative risk, doesn't it?

A That is important, yes, and I think that is a cardinal factor in it.

Q That's a cardinal factor in dealer paper being able to yield a higher yield to an investor than finance paper too, isn't it?

THE COURT: Wait. That's a new term. What do you mean, finance paper?

MR. PIEL: Finance company paper. I refer to the direct issuance, yes, sir.

Q Isn't that right, you agree with that?

A I believe so. I am not that much of a student on direct issuance of paper. I accept the marketplace as it is given to me, namely --

Q In any event, you found higher rates for dealer paper than for finance company paper?

A That is right.

Q Therefore, you preferred to deal in paper?

A That is correct.

Q As a security analyst at Dominick & Dominick, what did you analyze?

A I analyzed primarily corporate stocks and corporate bonds. That was about it.

Q Is it fair to say that analyzing of corporate stock or corporate bonds means analyzing the financial condition of the issuer of those securities?

A Very much so.

Q That is really what it is, isn't it?

A That's what it's all about.

Q Studying the financial condition and situation of the issuer that is offering its securities in the marketplace; is that right?

A Yes. I would add to that not so much the financial condition, but the future prospects so far as the equity investment is concerned.

Q Did you specialize in any industries in that activity?

A No. The shop was quite small at that time, and I was across the board, the work was assigned to me, and I did it on a handout basis.

Q That therefore would have included from time to time consideration of the investment worth of railroad securities; is that right?

A We had a railroad analyst there specifically for that purpose.

Q So you did not analyze it?

A I did not get into that.

Q In your analyses, what sources did you use for making the studies that you made for Dominick & Dominick?

A We used every available means of statistical reference, which is fragmentary at that time. The SEC had not been I think put into being where we had such voluminous amount of material as we do now.

We asked for information from various and sundry corporations. If we had a specific inquiry, we would call the corporate treasurer on the phone and asked. If he volunteered the information to us, fine. If he did not, we did the best we could.

Q Did you have Moody's service available to you?

A Yes, Moody's was there.

Q And that's all of the Moody's series, Moody's industrial, bank and finance companies, transportation companies, you had all of those?

A That is right, the whole volume.

Q Those are works, statistical works, which are commonly available to and regularly used by professional investors and investment advisers?

A Yes, they are, to the extent that they have a staff to use them.

Q When you went to New York Trust Company which became part of Chemical Bank, there I think you gave us the dates this morning of that service -- would you mind reminding me when that was that you were with the Chemical?

A In 1950 is the best date I can remember.

Q Until you went to Franklin Savings?

A I went to the Franklin Savings in 1953, and I was in the Service a year before that, that's '52. It was five years after that.

My recollection doesn't serve me well, but I can go from 1936 when I was with Dominick & Dominick and I was there five or six years, five years in the Service, and it was at the conclusion of my five years in the Service, so we are talking roughly 1946.

Q So it was another five or six years at Chemical Bank?

A Five or six years at New York Trust Company. I never went through with the merger.

Q Were you a senior member of the credit and investment research department?

A Not at the outset. I was near the terminal point of my service there.

Q Were you also at one time a loan officer?

A Briefly so, at the 40th Street branch, but that span of activity lasted only several months when I got my orders to report for duty.

Q What kind of loans were you making, corporations?

A These were corporate loans, yes. At the 40th Street branch were not handling nationally known credits. We were handling small businesses that were in need of temporary financing in the area.

Q I want to ask you some questions about the work that you did in advising correspondent banks with regard to their purchases of commercial paper. You remember you alluded to that this morning, I believe?

A I did.

Q What did you do in that connection?

A What was the nature of my response?

Q How did you assist them? What did you do?

A The inquiry would come in in letter form asking whether or not in our opinion the commercial paper of X,Y,Z Corporation was a proper purchase and holding for them. They had not bought it at that time. Or, if they had, they had no knowledge of it. It was a case where we would undertake a one-and-a-half-to-two-page report, letter report, back to the correspondent bank.

Q What were your sources of information for this two-page report to the correspondent bank?

A There was a good deal of boilerplate in it which

I explained by saying it was extracted from the services. Mind you, some of the inquiries we got since Dominick was internationally oriented, a number of the inquiries came from Swiss sources, outside the country, and did not have this information.

Q These are inquiries to you at U.S. Trust?

A Yes. I am sorry.

Q I thought you said Dominick.

THE COURT: He was mentioning Dominick. Let's clarify it.

Q I want you to focus on your subsequent service at New York Trust --

A We are talking about commercial paper now.

Q We are talking about commercial paper at New York Trust Company when you were advising correspondent banks.

A This would be a letter reply giving the background, history of the corporation, its business, its rank in the industry, and a display of statistical information involving financial condition, earnings, and then summarized in one sentence at the conclusion of the letter, that in our opinion we felt that the commercial paper was a purchase that could reasonably be made, or words to that effect.

Q How many different commercial paper issuers did you examine and advise on in this regard?

A Very few. We did not get very many letters of this kind.

Q What were the sources of your information for purposes of making that report to the correspondent bank and giving them that advice?

A The source of information was statistical reports, and at that time there was no reason why we could not use the credit department information in our files.

Q What information did you have in the credit department?

A Income and expense statements, balance sheet information sent in by the corporations with whom the New York Trust Company was doing business and lending money.

Q Would you say, then, that your analysis and advice was essentially based on an examination of the published or furnished financial statements of the issuer in question?

A It was closer than that.

MR. STITT: I object to the form of it -- withdrawn.

A (Continuing) It was closer than that. I just explained to you that we used credit department information.

Q The credit department information would be earnings statements, and the like, obtained from the issuer?

A That is correct.

Q This would be additional financial information?

A Well, that would be pretty basic. Right.

Q I am asking you whether --

A Yes, it would.

Q What I want to ask you is whether essentially the test was to examine certain balance sheet ratios such as current assets, current liabilities, debt to equity?

A Yes, that was part and parcel of it.

Q Was that essentially the way to tell if it was a good credit for commercial paper?

A Yes, we made independent valuations using all those yardsticks. Each letter could be different, depending upon the corporation. I would answer it one way and my associate answering an inquiry would have a different manner of handling it. But basically we used the same sources of information.

Q Did you notice whether or not the financial statements that you relied on in making these analyses were audited and certified by outside firms of Certified Public Accountants?

A In most cases they were because they were submitted to the bank and because of the borrowing arrangement that existed between the New York Trust Company and the corporation.

It was a requirement of the loan agreement to have it sent in.

Q Did you give this opinion to correspondent banks only if you were at the time making loans to the issuer in the bank or did you do it with respect to issuers for whom you were not making loans, or both?

A We would attempt to give every possible service to a correspondent bank if we got an inquiry of this kind.

Q Was it of some important to you to consider the stature of the Certified Public Accountants who reviewed the accounts with the issuer?

A Yes, that was very important.

Q In 1969 and 1970 were Peat, Marwick, Mitchell & Co. a leading respected firm of Certified Public Accountants in the United States?

THE COURT: Did you say the leading?

MR. PIEL: A leading.

A My recollection is that Peat, Marwick was of good standing at that particular date and time.

Q Did your letter of advice to the correspondent banks state whether or not the issuer of the commercial paper had any backup bank lines behind the commercial paper?

A It may or may not have.

Q That would not be something that you would know in every case?

A Yes, we would. Not in every case, no, but if we were in a credit arrangement or sharing credit with other banks, we certainly would know what the overall credit lines would be.

Q If you happened to be in the credit arrangement, then you would know it?

A Definitely, we would know.

Q Otherwise you would not be able to tell the correspondent bank?

A We would make inquiries if we didn't know. We have friends, or other correspondent competitors would exchange this information.

Q In other words, you could phone other banks and ask them?

A That's right.

Q You could that while you were at the Franklin Savings Bank, too, couldn't you, if you wanted to?

A No, sir, I don't believe that they would have told me.

Q You don't believe they would tell you?

A I don't see any reason why they would have.

Q Is it the fact that in making purchases of commercial paper, in these telephone calls with dealers' representatives, and you bought some from AG. Becker also, didn't you?

A Right.

Q And your conversations with their salesmen went the way your conversations with the Goldman, Sachs salesmen went in terms of stating the maturity and the amount and getting their available names; is that right?

A That is true.

Q Isn't it a fact that after you stated the maturity and the amount, if he mentioned some names one of which was familiar to you, you might say yes right over the phone without stopping to do anything more about it?

A That is possible. I had done that.

Q Isn't it a fact that it was only if it was an unfamiliar name to you that you might go to the manuals and see what kind of a company it was and what its history was?

A That is essentially correct. From time to time companies change names, and it may not strike an immediate note of recognition, and I would check it out briefly.

THE COURT: Is your question whether the witness when he made inquiry of the defendant bought commercial paper of companies which he did not know of without making an independent check?

MR. PIEL: I understand the witness's testimony to be that if it was a company that he knew about and was familiar with, he might simply say, "Yes, I would buy that." If he did not know that it was a company that he was familiar with, he would before placing an order check up himself by looking in a manual to see the history and nature of the company and the nature of its business.

THE COURT: My question is the next question: did you ever buy any commercial paper of companies whose name or background was unfamiliar to you?

MR. PIEL: Will you answer the Court's question?

THE COURT: In other words, I gather that you bought some commercial paper when a salesman for the defendant said he had a maturity that was to your liking, in an amount that was to your liking, of a corporation with which you were familiar. Penn Central. Did you make any purchases of paper offered by a salesman for the defendant when you had no knowledge of the corporation but first had to do an independent check on it?

THE WITNESS: As I said previously, your Honor, if the name was not immediately recognizable to me, I would make a brief inquiry in the manuals, and if it was a changed name of a corporation I knew, that would be fine, I could give the go-ahead signal.

However, in all cases, if the name was foreign to me I would check it out briefly in the statistical manuals.

THE COURT: I still haven't got an answer to my question. After making that checkout, did you purchase such commercial paper?

THE WITNESS: Yes, I did.

Q You purchased the commercial paper of a name previously unfamiliar to you after a brief checkout in the manual, right?

A That is correct, if I felt I had to, yes.

Q That's what you just said.

A Yes.

Q That was not an in-depth analysis of the credit?

A No, it was not.

Q Or of the financial condition?

A It was not.

Q It was just to see what kind of a company it was; is that right?

A To refresh myself as to whether or not it was a company that I had had a passing knowledge of beforehand.

Q Mr. Bock, you testified in this matter in June of 1972 in a pretrial deposition, did you not?

A Yes, I did, yes. I testified.

Q Have you reread your deposition lately in preparation for your testimony here?

A About three days ago.

Q A few days ago?

A Yes.

Q It is a fact, is it not, that your specialty, really, has been being an expert in the stock and bond issues of corporations, isn't that right?

MR. STITT: I object to the form of that question, your Honor.

MR. PIEL: It is either so or not so.

A Are we relating this question to commercial paper or are you talking about stocks and bonds?

Q No, I am asking you about your familiarity generally with the securities market and the issuance of securities generally.

A That's right, I am considered a professional investor.

Q You are a professional investor?

A Right.

Q And you were the principal investment officer for Franklin Savings Bank in charge of at least the recommendations; is that right?

A That's correct.

Q You have an investment committee --let's go back to 1969 and 1970.

A Right.

Q Focus on that period. At that time you had an investment committee?

A At that time we had an investment committee for equity purchases only.

Q You were an ex-officio member of that committee?

A That's correct.

Q Typically, would you make the recommediation or suggestion to that committee for their review and approval?

A No, I would not. We had talented trustees in business in investments, and they brought the wealth of suggestions to the committee's attention and it was discussed at that time.

Q In any event, you and the members of the committee concurred in the decisions of the committee?

A Right, I was a participant.

Q You did not cast your vote or take the responsibility for joining in a decision without acquaiting yourself with the financial condition of the issuer, did you?

A That is true. I was a minor participant in it, being ex-officio and just an officer of the bank and not a full-fledged member of the committee.

Q But you made sure that you knew what you were doing?

A That's right.

MR. STITT: Your Honor, had the witness finished his answer?

Q I don't mean to cut you off. Any time I do, just raise your hand.

A Where are we now?

Q I am asking you what you did as a member of the committee.

THE COURT: In relation to the purchase of securities.

Q I am asking you whether in concurring and joining in the investment committee in the decision to acquire a certain equity investment you satisfied yourself that you knew what you were doing?

A Yes, that was true. May I correct one point?

Q Certainly.

A You asked me whether I was an ex-officio member of the committee. I was not of executive office rank at that time. I was the vice-president, I believe, and I was not a member of the committee. I was their secretary.

Q When did you become president?

A In 1969, July of 1969.

Q At that point did you continue as a member of this committee?

A The committee had been disbanded.

Q At that point?

A Right.

Q When the committee was in existence which functioned with respect to equity investments, what about debt investments, bonds and debentures of corporations, did you purchase those without consultation with the committee?

A Yes, to the extent that we were in the business of buying corporate bonds.

Q For investment?

A For investment. This is largely a U.S.Government bond purchase operation, and agencies. The Franklin was mortgage loan oriented, but to the extent that they were corporate bond purchasers, I executed those orders.

Q Starting at page 19 of your deposition in June, 1970, were you asked these questions and did you give these answers:

"Q Prior to purchasing commercial paper of a particular issuer, did you yourself undertake any analysis of the financial condition of the issuer?

"A Actually, it works the other way around. You call the dealers and find out what is available. The market in commercial paper is not as broad as it would appear from the list of names that each dealer sends you, whereas there may be 40 names there will be only five in the marketplace at any one particular time that you care to look at. So it is from the names mentioned by the salesman on the phone that you draw your purchase.

"If it is a name that is well-known to me, and I have reasonably good knowledge of its background, standing, financial affairs, there may be an immediate 'Yes' on the phone. If it is a name that is new to me, I will take a look at the statistical manuals and other sources and decide whether or not I would care to buy and call back and say 'It looks all right.'

"Q Which was the case with Penn Central?

"A This was the case with Penn Central.

"Q Which was? You described two alternative positions. One alternative where you were not as familiar with the company and you would make an additional analysis before reaching a decision and the other you would have knowledge of the --

"Mr. Stitt: Are you referring to any particular purchase at any specific time? The purchases of Penn Central were made in 1968, 1969, as well as 1970.

"Mr. Graham: I would like a separate answer for each purchase, if they are different, beginning with the first purchase on September 25, 1968.

"A With respect to that purchase, if you will note on the purchase order, which is an internal sheet from the bank, we were offered and I accepted Gimbel Brothers. That was unavailable and the salesman offered Penn Central. While my recollection is not entirely clear as to the time interval between the time I was told that Gimbel's would not be available and the Penn Central was bought, I presume there was an opportunity for me to take a quick look at Penn Central as of the date as to its acceptability.

"Q Could you describe in more detail what you would do in cases where you chose not to make an immediate decision but rather chose to undertake further investigation?

"A We would refer to the statistical manuals which we have in the bank. I would -- just to get a general feel of the company. If it were not something that was in effect recommended to me by the dealer, I would have no interest in pursuing it. So we start from that premise, that it was something which was offered to me under the guidelines set down with the dealer, that it had to be prime, of prime quality, and if I expressed lack of knowledge of the company, then I would find out a little bit more about it from the standpoint of its organization date, how long it had been in business, the nature of its business and other relevant matters which lead up to a general impression that maybe the recommendation or the offering would be a good one.

"Q Can you remember any other particular factors that you looked at?

"A Nothing other than the maturity date and the yield at which I was going to buy it."

Were you asked those questions and did you make those answers?

A Yes, I did.

MR. STITT: Could you read the next question and answer?

MR. PIEL: I think it is on another topic, and you are free to read it any time you like. You asked him about that, direct issue purchase.

Q At the time that you made that purchase in September, 1968 --

MR. STITT: Your Honor, so the context may be clear, I would like to read the next question and answer.

THE COURT: I gather this is being used for credibility, not for eliciting affirmative proof. You may do that on redirect.

Q Is it not a fact, Mr. Bock, that at the time that you made that purchase of Penn Central commercial paper in September, 1968, you were already fairly well-acquainted with Penn Central?

A Yes, that is true. As of that date.

Q As of that day. On June 29, 1968 --

A That's right.

Q -- Franklin Savings Bank bought 500 shares of Penn Central common, did it not?

A Yes, it did.

Q Do you know whether there came a time when Penn Central Company changed its name?

A I believe October of '69. That's the only recollection I have.

THE COURT: This is Penn Central Company?

THE WITNESS: Yes.

Q What did you buy the stock in? What was the corporation whose stock you bought?

A Penn Central Corporation.

THE COURT: Is there a difference between "Company" and "Corporation"?

MR. PIEL: No.

Q But there is a difference between Penn Central Corporation and Penn Central Transportation Corporation, is there not?

A There certainly is.

Q What's the difference?

A Penn Central Transportation Corporation is a railroad operating entity, and it has investments or had investments in subsidiary companies, Srvida, Great Southwest, Byckeye Pipeline.

Q Pennsylvania Company?

A Whatever it is.

Q I am suggesting that's another one.

A Pennsylvania Company?

Q Yes.

A No, that is a holder of some railroad lines, I believe, I am going back five years now, and then there was an interchange and quite confusing where the Pennsylvania Company, which was the operating company, became the parent, and some interchange --

THE COURT: Now you are losing me. You told me that Penn Central Transportation Company was the operating company.

MR. PIEL: Your Honor, I have in mind what the changes were. I am trying to find out whether this witness knows which company he was buying the paper in.

THE COURT: And I am trying to find out what it is all about because I am not familiar one iota with the Penn Central setup.

MR. PIEL: May I come to that in a moment, your Honor?

Q Have you told us what you are able to tell us about the relationship of Penn Central Company and Penn Central Transportation Company?

A I am attempting to answer your question to the best of my ability, going back to June of 1968 when the purchase of the commercial paper was in March of 1970, an entirely different time frame, with a lot of interchange of names and activities.

THE COURT: Let's take June, 1968. You said you were fairly familiar with the Penn Central Corporation, is what you told me. Now the question is, what is the Penn Central Transportation Company? Your answer was it is the operating company of the railroad that owned subsidiary businesses. What is the difference between the Penn Central Transportation Company and the Penn Central Corporation?

THE WITNESS: Is that question directed to me, your Honor?

THE COURT: Yes. I am trying to clarify testimony you gave me.

THE WITNESS: When I was testifying as to the differentiation between the Transportation Company and the Pennsylvania Company --

THE COURT: Please don't say Pennsylvania Company. Penn Central Company is the one you told me about.

THE WITNESS: Penn Central Company, I was relating my testimony to the purchase of March 16, 1970.

THE COURT: But we are talking about June of 1968 when you bought 500 shares of the Penn Central Company or Corporation.

THE WITNESS: To the best of my recollection, we were buying the common stock of a corporation that had been formed out of the merger of the old Pennsylvania Railroad Company and the New York Central Railroad Company.

THE COURT: What was its difference from the Penn Central Transportation Company?

THE WITNESS: That I do not know at that time.

MR. PIEL: Your Honor, our claim as to what those facts are, and I dont think there is any dispute about it, is Item 30 of our proposed findings of fact and conclusions of law, and that is our trial brief.

THE COURT: Page 29?

MR. PIEL: Page 5 of the proposed findings.

THE COURT: You have a chart on page 29.

MR. PIEL: That shows, your Honor, the situation as of different dates, that's correct.

THE COURT: That's August 1, 1968?

MR. PIEL: That's right. Following the October 1, 1969, changes there is another chart.

THE COURT: Mr. Stitt, do you agree that the chart appearing on page 29 indicates the corporate setup at those various dates?

MR. STITT: I will have to look at the chart, your Honor. I don't have it before me.

(Pause.)

MR. STITT: I have page 29 before me. My inquiry has indicated that there was a change reorganization of the Penn Central Companies on October 1, 1969, where the name of the railroad company was changed to Penn Central Transportation Company.

There was a new holding company formed called Penn Central Company and the Penn Central Company held the stock not only of the Transportation company but also outside the Transportation Company of a number of additional companies, and I presume these are the ones that arereferred to in the box in the lower lefthand side of page 29, Southwestern Oil, et cetera, and that the Pennsylvania Transportation

Company continued to hold the Pennsylvania and other companies, but without continuing to hold Southwestern Oil, Royal, and --

15 THE COURT: In other words, you say in the box in the lower portion of page 29 under April 1, 1970, which ties up directly with Penn Central Company which tied up to the Penn Central Transportation Company as of October 1, 1969?

MR. STITT: Yes.

THE COURT: Is that true?

MR. PIEL: Those are minor investments.

THE COURT: Unimportant for the issue in this case?

MR. PIEL: They are totally unimportant to the issue and totally unimportant to the financial condition of the railroad. They were purchased in February, 1970. They were additional investments. The real structure of the railroad is represented by the as of October 1 --

THE COURT: I will take page 29, then, as showing the --

MR. PIEL: Let me just point out to your Honor that the company which was named Penn Central Company as of August 1, 1968, is the same company that was named Penn Central Transportation Company as of October 1, 1969. That was a name change.

Then a new holding company was superimposed on top to put it in a position to make additional acquisitions, such the one they made as of April 1. The issuer of the notes --

THE COURT: Is that the beginning of the end?

MR. PIEL: No, no. Those are minor.

MR. STITT: Apparently, your Honor, there were some assets that were --

THE COURT: They weren't important, I understand, Mr. Stitt. Let's go on.

MR. STITT: I am not in a position to say whether they were or were not, your Honor.

THE COURT: As far as this lawsuit is concerned, is what we are talking about, Mr. Stitt.

MR. PIEL: There were some small additional investments they wanted to make and the holding company had been formed so they could make additional investments which would be subject to the SEC instead of the ICC. That's the only reason for the change in structure.

THE COURT: Go ahead.

BY MR. PIEL:

Q When you joined the investment company in the decision to make the purchase of common stock in June, 1968, what did you do to acquaint yourself with the Penn

Central Company?

A When you say that I joined the investment committee in the decision to buy the Penn Central stock, I call to your attention that I was the investment officer of the bank and I was not a member of the committee.

Q I beg your pardon. Did you at that time in view of Franklin Savings Bank's investments acquaint yourself with the Penn Central Company?

A I did the best I could to acquaint myself with affairs of the company.

Q What sources did you use to acquaint yourself?

A Purely statistical manuals --

Q I'd like you to identify those manuals.

A It would be Standard & Poor's Corporation.

Q Did you also have Moody's?

A No, we did not.

Q You did not have Moody's in the bank, is that what you are saying?

A That is right.

Q Only the Standard & Poor's service?

A That is correct.

Q Does it cover approximately the same ground of information?

A In some respects I think Standard & Poor's covers more ground and in a more current fashion.

Q Generally speaking, from your experience at Dominick & Dominick and New York Trust as well as at Franklin Savings, you can get the same information from both but you may get some more out of Standard & Poor; is that right?

A It is possible, depending upon what one individual's preference is for information.

Q Did you have any other sources of information?

A It is essentially derived from the same corporation, namely the Standard & Poor's Stock Guide, which is a summary edition of all of the stocks traded on the New York Stock Exchange but not specifically going into detail of financial background. It is more of a quick handy reference manual.

Q As the chief investment officer of Franklin Savings, have you at all times felt it was your duty to keep abreast of the financial press?

A Yes, very much so.

Q Does that mean at least a thorough perusal of the Wall Street Journal every day?

MR. STITT: I object to the word "thorough."

A Pardon me? I didn't hear that.

THE COURT: "Thorough" and "perusal" seem to be a little antagonistic.

MR. PIEL: I didn't mean to be antagonistic.

THE COURT: Internally antagonistic, not externally --

MR. PIEL: I am feeling very affected towards everyone.

THE COURT: Let's skip my attempt at humor. Thorough perusal has a very difficult connotation for a witness to understand.

MR. PIEL: I will strike "thorough."

Q How about perusal?

A Perusal would satisfy me greatly.

Q Daily perusal of the Wall Street Journal?

A That is correct.

Q I asked you a leading question and I will turn it into a non-leading question. How thorough?

A I normally don't read the Wall Street Journal until I arrive at home in the evening. In some cases I may read it the next day on a catch-up basis. I have many things to do in the bank. I literally thumb through it fast reading headlines.

However, if I see an item of any substance where I do have a deeper interest, I will read the article thoroughly.

Q . Would that include an item about a company in which the bank had any kind of investment?

A Yes, it would.

Q Or in which it had an investment from time to time?

A My interest in a company where we had a sporadic investment would not occupy much of my attention. However, a company in which we do have an investment would.

Q Was it your practice in 1969 and 1970 to look at The New York Times also?

A Yes.

Q Did you glance at the financial sections?

A Yes, I looked at the financial section.

Q To see if that would present something of interest to you?

A Yes, sir.

Q Then again companies in which your bank might have an investment of some kind might be something you would stop to read?

A That's correct.

Q Is there any procedure within the bank for materials from other sources to be brought to your attention?

A As I testified earlier when Mr. Stitt was questioning me, we do receive brochure material from the houses in Wall Street, whether or not we have a relationship with them, analytical reports. Those pass over my desk. In 1968 and 1970.

Q Did you say whether or not you have a relationship with them?

A That is correct.

Q You mean investment houses around Wall Street trying to interest you in their services will send you their investment reports; is that right?

A Very much so.

Q Is that right?

A Yes, that's correct.

Q Do you peruse any other financial publication? Again, 1969 and 1970, were you perusing any other financial publications on a regular basis?

A No, I was not.

Q Did others come to the bank? Did you receive the Journal of Commerce?

A No, we did not subscribe to the Journal of Commerce.

Q You bought another 500-share block of Penn Central Company common stock, did you not, on October 4, 1968?

A That's right. The bank bought another --

MR. STITT: Objection to the use of the word "you." If he is referring to the bank --

Q I am referring to the bank.

A I am answering it for the bank. The bank bought another 500 shares additional on that date.

Q In other words, a month after buying the first Penn Central commercial paper note you bought another 500 shares of common stock?

A That is correct.

Q What was the reasoning behind the decision, if you know, for buying the common stock of Penn Central in June and October, 1968? What commended it to the bank?

A I could answer that question by recollection of the discussion which took place at that time, namely that here was a marged company, great promise was held for it to limit their transportation losses, there was a press report saying that the merger was going well, it attracted the attention of a following in Wall Street, some of the investment funds were buying Penn Central common stock, and it was the judgment of the committee that we should buy 1000 shares all-told.

Q Do you have any other recollection about it?

A Only that we sold it subsequently.

Q . Were you asked this question, page 46 and page 47 -- I will withdraw that because I would like to ask you another question. I don't think you have exhausted your recollection as it existed in 1972, so I am going to go back to this and see if it refreshes your recollection, but first I want to ask you whether you remember selling the stock, I think it was April 23, 1969?

A The sale of the 1000 shares of Penn Central? I assume that date is correct. I have a sheet before me, if I may use it, to refresh my memory.

Q Yes.

A Sold April 21, 1969.

Q You have a sheet?

A I have a summary sheet of that purchase.

Q At a loss of $23,000 or $24,000?

A That is correct.

Q What entered into the decision to sell it at that time?

THE COURT: It dropped 23 points.

A My answer may have to be a little elementary in that buying and selling of equity common stock ispretty much a judgment of the marketplace as to what you think other people are going to do. If the stock has a great following, everybody gets on the bandwagon and it is a buyer-seller's proposition. If there is more demand, the stock goes up. If the prospects are good and there is a prospect of more earnings, there are more buyers waiting in line and it is an auction market.

In this particular case our sale was prompted by a realization that maybe some of the more rosy predictions as to the merger and its prospects were not going to materialize, and when a stock of this company which is newly formed loses favor, it can recece in price. After all, it is only the price-earnings ratio that really makes the level at which the stock sells.

Q The stock had dropped 10 points between your purchase in June and your purchase in October, 1968, hadn't it?

A Yes, it had.

Q And in spite of that decline, in the estimation of the marketplace, you bought some more?

A If you will read my testimony, it says that we thought that it was probably better 10 points lower. Prospects at thattime within the space of four months, that's a judgmental factor.

Q On page 46 of your deposition, did you testify as follows, and I don't think we need the question here, Mr. Stitt:

"A The decision to buy Penn Central stock" --

MR. STITT: I would ask that the question be read.

Q "Q Mr. Bock, GS Exhibits FSB9, 10 and 11 indicate two 500-share purchases and one 1000-share sale of common stock of Penn Central, purchases in 1968 and the sale in 1969. What analysis preceded the first purchase of 500 shares of Penn Central by the bank?

"A The decision to buy Penn Central stock in June of 1968 was a committee decision reached by gentlemen who are experienced investors" --

MR. STITT: I believe that was changed to "who were experienced investors."

Q -- "who were experienced investors."

I don't have a corrected copy, so stop me if there are other corrections.

MR. STITT: All right.

Q "Their respective positions, the information that they obtained at their specific places of employment, indicated that Penn Central stock may be a good investment" --

MR. STITT: "may" should be "might."

Q -- "might be a good investment for the bank as a capital gains vehicle. It was not bought for income. Most of the common stock bought by the Franklin is for long-term capital gains, and we have a dollar limitation under the law as to what we are able to buy.

"Penn Central at that time was acting very well in the marketplace. There were bullish reports on the Street concerning a turnaround in its financial affairs, the diversified investments other than the railroad and transportation business were held to be proving out. That is the wisdom that the management of the company finally had in trying to offset transportational losses of transportation problems with genuine earnings from the diversified investments that Penn Central was going into. 500 shares were bought on that basis.

"Do you want me to continue with the second part of this?

"Q Yes.

"A The rational was still the same. It still looked like a worthwhile buy for the bank and therefore we bought another 500 shares at 10 points below the previous purchase. I suppose we felt it was a good purchase at 82 and at 72 it may have looked better.

"However, subsequently, the market action of the stock did not warrant our further confidence in it. While the affairs of the company seemed to be shaping up better at that particular time, I recall having heard or read of various reports from analysts in the Street lacking a little bit of confidence in the ability of the management to do this tremendous job.

"With that background, we decided to sell at a loss, whichwe did. We felt it offered nothing more for the Franklin at that time.

"Q Did you participate in discussions leading up to the decision to sell the shares?

"A Yes. I am part of the investment committee, ex-officio at that time."

Did you so testify?

A Yes, I did.

Q You referred to bullish reports in the marketplace about Penn Central. That means about the company, doesn't it?

A That is right.

Q And about its having long-term prospects of availability and increased profitability?

MR. STITT: I am not sure that's in the testimony.

A I didn't really say that.

Q I am asking you if that was part of what you heard.

A I heard rather optimistic reports that the merger was working out quite well and that it may be the management's ability to turn things around so that there would be sufficient income generated from the non-railroad activities which would offset the losses in the transportation end of the business.

Q So when you said turned around --

A That's what I meant by turn-around.

Q Turn-around from an unsatisfactory condition to a more satisfactory one, or what?

A I am talking about a turn-around in all-over consolidated earnings, not a turn-around in the transportation end of the business. In other words, the profits to be derived from these non-railroad investments, great promise was held out for that, and, as I remember, I think it was even expected that at some time after they were able to settle down the railroad ended the business, that they would possibly phase it out. That is just conjecture.

Q They might phase out the railroad end of the business?

A This is what I heard.

Q Does that mean that in your estimation at that time in making that investment, the particular results of the railroad operations themselves were not as important as the overall prospect for the improvement of the consolidated results?

A That is correct.

Q Indeed, you knew, I am sure, did you not, Mr. Bock, that the merger had gone up and down in the Supreme Court and before the U.S. Legislature for quite some time before it was decided that the New York Central and the Pennsylvania could merge?

MR. STITT: I object to the form of the question. I ask that times be specified.

THE COURT: I assume he means at the time of the purchase of the second 500 shares.

MR. PIEL: Yes.

Q Was that something that you knew at the time?

A What you are talking about, Mr. Piel, predates my first purchase of Penn Central stock. I think it does.

Q Did you familiarize yourself with the history of it at the time of the purchase at all?

A No, I did not. As I testified and I believe you read, this is the judgment of the committee, men versed in investment activities and in Wall Street.

17 Q Incidentally, did you personally own any securities at any time of any of the Pennsylvania companies, Penn Central companies?

THE COURT: When?

MR. PIEL: At any time.

THE COURT: In 1923?

MR. PIEL: We will say post-merger.

Q 1968 onward.

A No, I did not.

Q Had you owned stock in either of the predecessor railroads, the New York Central or the Pennsylvania Company?

A No, I did not. I had no personal investments of that kind.

Q I show you Exhibit H for identification.

THE COURT: Let's get it marked here.

(Defendants' Exhibit H was marked for identification.)

Q Exhibit H, Mr. Bock, is an article that appeared in the Wall Street Journal, January 31, 1969, at a time when you were holding a 1000-share equity investment and that purchase in commercial paper. You recognize the page 1 and page 5 references to a summary on the front page and a story on an inside page, do you?

A I have lost the question and I think I have something in there that I would --

Q I was calling your attention to the fact, this is arranged by really two clippings reproduced on a page.

One was on page 1 and the other was an inside story, page 1 and page 5 items are on that document.

Do you recall reading this news about the Penn Central while you held Penn Central investments at Franklin Savings Bank?

A I don't recall specifically having read this particular article, and so far as the investments that the Franklin had as of this date, we owned only the common stock.

Q You note that this article referred to a decline in earnings from railroad operations of some $14,000,000 from the previous year?

MR. STITT: If your Honor please, the article will have to speak for itself.

MR. PIEL: That's preliminary to a question.

A I will have to read it to ascertain that. If you would help me on the paragraph --

Q I am sorry. The second paragraph of the story, and it is in the first page summary. "Railroad operations sustained a $2.8 million deficit compared with a 1967 net income of $11.5 million."

A Right, I am with you now.

Q You don't doubt that you were familiar with that fact at the time?

A I can't recall whether or not I was.

Q You have told us that you perused the Wall Street Journal every day, you noted items about --

THE COURT: That is argumentative. This is in evidence, I assume. There is no objection to it, is there?

MR.PIEL: I offer it.

MR. STITT: Your Honor, our objections to this went to relevancy and to hearsay.

THE COURT: Overruled.

(Defendants' Exhibit H was received in evidence.)

Q Mr. Bock, this was not news which resulted in a decision forthwith to sell the common stock investment, was it?

A It is possible. It may have been that the committee having read this, whereas it may have escaped me, was willing to bide and give the situation a little more time. You will note that it was sold on April 23. That's about a month and a half later.

Q I show you Exhibit A211.

THE COURT: Have it marked by the clerk.

(Defendants' Exhibit A211 was marked for identification.)

Q This is an article that appeared in the Wall Street Journal on April 24, 1969.

MR. PIEL: I offer it in evidence.

MR. STITT: If your Honor please, I do feel there is not sufficient foundation laid for the receipt of this newspaper article.

THE COURT: What do you want me to do?

MR. STITT: I object to its receipt into evidence.

THE COURT: You made a statement that there is no sufficient foundation. I am asking you, what do you mean by no sufficient foundation?

MR. STITT: I do not think it has been identified by the witness, I don't believe it is relevant and it is hearsay.

MR. PIEL: Your Honor, there is no --

THE COURT: Obviously, the last two are out. Show it to the witness and see if he has read it.

THE WITNESS: I don't recall having read this.

THE COURT: You don't recall having read it?

THE WITNESS: No.

THE COURT: Admitted in evidence.

x (Defendants' Exhibit A211 was received in evidence.)

Q You don't doubt, do you, Mr. Bock, that you were aware that there was further bad earnings news about the Penn Central after the first quarter of 1969?

MR. STITT: I object to the form of that question.

THE COURT: Overruled.

A Yes, I had a general impression here that the railroad transportation business was not doing too well, a general impression.

Q That the turn-around wasn't coming as fast as perhaps some had hoped; is that right?

A When you mention turn-around, you are talking about the railroad end of the business. When I speak of turn-around, I am speaking about the overall consolidated enterprise, where the investments are proving out, where Arvida, Great Southwest and all the other non-rail activities were coming home with profits. That's what I talk about when I talk about turn-around.

Q If you will glance at this item by way of trying to refresh your recollection a little further, without burdening you with reading all of it, read as much as you would like, but I would like to call your attention to the headlines and to the last two paragraphs. I ask you whether that doesn't refresh your recollection that you were aware at about this time that consolidated earnings had fallen on increased revenues?

A I can't recollect whether or not I was aware of the consolidated earnings. I did have an impression that the non-railroad activities were doing quite well, and the last paragraph indicates that here, now that I read it.

THE COURT: That the operations of the railroad company were going down faster than the outside companies were going up, according to this article.

Q Do you recall being aware of that, Mr. Bock?

A No, I don't recall being aware of it, but somebody just have, because we sold the stock the day before.

Q With regard to the second quarter results for the Penn Central, I show you Exhibit AB for identification, an item from the Wall Street Journal.

A May I ask, second quarter of which year?

Q 1969.

MR. STITT: May we have the date of the article?

xx (Defendants' Exhibit AB was marked for identification.)

THE COURT: What's your problem, Mr. Stitt?

MR. STITT: I don't have the document in front of me, your Honor, and I am simply inquiring as to the date.

THE COURT: July 29, 1969. Issue of the Wall

Street Journal.

MR. PIEL: I offer that in evidence.

MR. STITT: Your Honor, my objection would be the same as before. It has not been identified by the witness.

THE COURT: Same ruling.

(Defendants' Exhibit AB was received in evidence.)

Q Does this refresh your recollection, Mr. Bock, as to whether or not you noted that the Penn Fentral profits declined further in the second quarter?

A I have no recollection of specific figures at all, just broad knowledge of passing interest.

THE COURT: What was that broad knowledge?

THE WITNESS: Simply by reading the headlines, which could have left me a day later, unless we had an investment in it, and even then it would be subject to measured reading later on, your Honor.

Q Mr. Bock, with that knowledge, in August, 1969, about three or four months later, you bought another $1,000,000 of Penn Central notes from Goldman, Sachs, did you not?

MR. STITT: Is this three or four months later?

Q August 5 and August 26, 1969. Half a million dollars each time. Is that right?

A That's correct.

Q With that knowledge, you bought those notes?

A That is correct. If I may --

MR. STITT: If your Honor please, the witness was in the middle of an answer.

THE COURT: The question called for a yes or no answer. The rest is being volunteered by the witness. Go ahead, Mr. Piel.

Q Mr. Bock, I'd like you to explain to the Court why it was that notwithstanding this knowledge of declining earnings of the Penn Central Company, of its railroad operations and of its consolidated results, so far as earnings were concerned, notwithstanding the decision of the investment committee to sell the common stock, you felt it prudent when one of the Goldman, Sachs salesmen in August said, "The names we have include Penn Central," to say, "I will take Penn Central," can you explain that to the Court?

A I can explain. There is a wide difference as to the action we took in selling the common stock in 1969, April of 1969, as against purchases of the commercial paper.

Q In August?

A Commercial paper in August. As I have testified, we were looking for 90-day commercial paper in the marketplace, we had lines of contact with Goldman, Sachs. It was clearly understood at the outset of our relationship --

Q Excuse me.

MR. STITT: If your Honor please, the witness is in the middle of an answer --

THE COURT: You have asked him why, Mr. Piel, and when you ask "why," you know, you might as well sit down and relax.

MR. PIEL: All right, I will relax.

A (Continuing) I have lost my train of thought.

THE COURT: You had lines of communication with Goldman, Sachs, and there is a difference between buying in equity and buying commercial paper. Go ahead.

A (Continuing) At the outset of our relationship with Goldman, Sachs I indicated very clearly that we were limited to the purchase of prime rated commercial paper. I also expressed my desire to be offered only prime quality paper, and when offerings were made and names mentioned to me, it was on the assumption that in both cases I wanted was there.

Against this backdrop of unfavorable earnings report, yes, I did buy the paper from Goldman, Sachs, but I did it with confidence that Goldman, Sachs knew what it was doing, knew about the financial affairs which I did not have at my command at the time.

I expected them to be knowledgeable in all aspects of this. I wanted them to be, and I would hope that they would have been, monitoring the investment for me, offering me only prime quality paper. They had better command of the situation than I did. I was an institutional investor without a credit department, without access and lines of information which Goldman, Sachs had.

Q So in spite of having what we might refer to as some bad news about the Pennsylvania, you trusted Goldman, Sachs to balance the bad against the good and make a sound decision?

MR. STITT: I object to the form of that question, your Honor.

THE COURT: Objection overruled.

A I am to answer the question?

THE COURT: Yes.

A (Continuing) Yes. I placed confidence in Goldman, Sachs in offering the merchandise that I wanted, which was agreed upon at the outset.

Q You weren't trying to make the investment decision, then, yourself, the credit decision, the credit evaluation?

A No, I was not, but I certainly would have had

I gotten sufficient information for me to have made a proper evaluation.

Q You said you assumed that Goldman, Sachs was monitoring the situation. Would you tell us what that involved in your assumption?

A Based on the pamphlet literature sent to me, Goldman, Sachs professed to be in close contact with their commercial paper issuers, they were very close with the management, that they were able to obtain credit information and evaluate it in their credit department, and the end result being that they were prepared to offer an investment to a purchaser with whom they were doing business.

Q Does a credit evaluation involve a judgment balancing of negative factors and positive factors?

A Yes, it does, in varying degrees.

Q Did you assume that Goldman, Sachs was trying to get the information with which to do that balancing judgment?

A Very much so.

Q Did you assume that there were no negative factors in their evaluation?

A I did not.

Q You knew of one of them, did you, by reading the newspapers?

A The general impression I had of the financial and hard road that Penn Central was trying to follow.

Q You knew that would have to be considered along with prospects and strengths and assets in a judgment about credit worthiness?

A Yes, that was right.

Q And you wanted Goldman, Sachs to make that credit judgment? You assumed that they were making it?

A I assumed that they were making it.

Q Making it for you, because you didn't undertake that kind of a study; is that right?

A Yes, at that time. However, if I may say so, I expected to see a flow of information as indicated in each letter of confirmation, which was not there.

Q We will come to that.

A Right.

Q We will cometo that, Mr. Bock. Now I'd like to show you Exhibit A195.

xx (Defendants' Exhibit A195 was marked for identification.)

Q Do you recall having seen that report of third period results?

A I cannot recall having seenthis specific article.

Q In the Wall Street Journal of October 21.

A I do not recall it.

Q Do you recall that you continued to note the declining earnings situation of the Penn Central?

A I still had the vague impression in the overall that the affairs of the transportation in the business was not as good as could be expected.

Q In your opinion based on your experience of studying commercial paper credits for the benefit of correspondent banks, and so on, do you regard a decline in earnings trend as a negative factor or a positive factor or neutral in making a credit working assessment?

A It would be my feeling that if you had a negative earnings trend, that would be something to throw up a caution signal.

Q Does it preclude a conclusion of credit worthiness?

A No, it does not.

Q You could find strengths in the picture that could offset it; is that right?

A It is possible, yes. I mentioned the non-railroad activities.

MR. PIEL: I offer Exhibit A195 in evidence.

MR. STITT: My objection would be the same as to the others, your Honor.

THE COURT: Overruled.

(Defendants' Exhibit A195 was received in evidence.)

MR. STITT: I note from the pretrial order that it is represented that this document comes from the credit files of Goldman, Sachs. I believe that is also true of the previous newspaper articles, and if that is so I would have no objection to its being received.

THE COURT: I don't know what that has to do with the admissibility. Anyhow, there is no objection, so A195 was received.

BY MR. PIEL:

Q I now show you Exhibit for identification CK premarked and I ask you if that refreshes your recollection that in November, 1969, it came to your attention through press reports that the Interstate Commerce Commission had granted Penn Central Transportation Co. authority to issue an additional $50,000,000 worth of commercial paper?

A I don't recollect this specific article or date, Mr. Piel.

Q Do you recollect the fact as coming to your attention?

A I do recall that the ICC did indeed allow Penn Central --

THE COURT: Isn't this what we have already had in, the actual report of the Interstate Commerce Commission?

MR. PIEL: I would like to show by offering this newspaper clipping that it was also a matter of public knowledge, not a matter of some inside knowledge. I offer it in evidence.

THE WITNESS: I do recollect that the ICC did grant the railroad permission --

THE COURT: Where does this come from?

MR. PIEL: This particular item was in the Journal of Commerce on November 10, 1969, and it comes out of a press clipping book of Goldman, Sachs.

MR. STITT: Was the question whether the witness saw this particular article?

THE WITNESS: I did not.

MR. STITT: Your Honor, on the representation that this comes from the credit files of Goldman, Sachs, I would not object.

(Defendants' Exhibit CK was received in evidence.)

THE COURT: This is tied in with Plaintiff's Exhibit F-48?

MR. PIEL: Is it 148?

MR. STITT: F-48.

Q I show you Exhibit premarked for identification A187, a Wall Street Journal article of November 28, 1969, and ask you if you recall seeing that itemof information in the public press?

A I don't recall having seen this specific article, but I do have recollection of certainly Penn Central omitting its dividend payout.

Q In 1968-69 and the early part of 1970, where did you reside, Mr. Bock?

A Where was I living?

Q Yes.

A I lived here in New York City. My home is in Scarsdale, New York.

Q Your home was in Scarsdale?

A Scarsdale, New York.

Q At that time?

A Yes.

Q So that you commute in to work?

A That is true.

Q How did you spend your time coming in in the morning, reading something?

A Yes.

THE COURT: Playing bridge with his friends.

MR. PIEL: That would perhaps cut down his Wall

Street reading time.

THE COURT: I don't think you need that. He said he looked at it every day, whether it is that day or the next day.

Q This particular news that you were aware of in November, 1969, informed you of a cash pinch in the affairs of Penn Central Company, did it not?

A Yes, it did, but it also indicated to me that they were going to save this amount of money rather than pay it out.

Q It showed you that they were pinched for cash but doing something about it?

A Yes, sir.

Q There is no doubt that it was public knowledge that they were pinched for cash, is there?

A That's correct.

MR. PIEL: I offer 187 in evidence.

THE COURT: Any objection?

MR. STITT: No objection, your Honor.

(Defendants' Exhibit A187 was received in evidence.)

Q I show you Exhibit PI for identification, an item from The New York Times of January 9, 1970, and, if your Honor please, we will substitute a more legible copy.

Was this particular newspaper item produced from your files, Mr. Bock?

A Yes, this is an item that I had stored away in my file which --

Q That item about a bullish view of Penn Central in January, 1970, included in the upper righthand quadrant or the top of the righthand column the words "Penn Central's tight-cash position was being relieved now that dividends were temporarily eliminated," but the report noted that it came as a "unpleasant surprise to shareholders who bought the stock for dividends."

You were aware at that time of Penn Central's tight-cash position, were you not?

MR. STITT: I object to the form of that question.

THE COURT: Overruled.

A I was aware that there was a cash shortage on the part of Penn Central.

Q In the lefthand column of this newspaper clipping from your file, above that dot that separates the sections of it in the upper lefthand column, there is a reference to the evaluation of negatige factors and plusses. Was that your view at that time, that the Penn Central was a matter of balancing negative factors against plusses?

A I haven't had the opportunity to refresh my memory on this. I don't know what you are talking about.

Q Please don't let me rush you. I will count it from the bottom so that you will see the paragraph that I am talking about and then you look at as much of the context as you need. It is the third paragraph from the bottom which begins, "The company's stock is now at a level of less than 25 per cent of book value," and so on.

(Pause.)

A The question?

Q The question is whether this corresponds to your own view at the time that the question of Penn Central and its future was a matter of judgmental balancing of negative factors against plusses?

A No, that would not be my opinion. This is strictly a statement made with reference to the company's stock, not to its credit obligations. You can make wide interpretations with reference to a company's stock, but you make entirely different assumptions with reference to its debt obligations and credit obligations.

Q If you were making an assumption, Mr. Bock, that a company had promise for the long-term future, for growth, improved earnings, improved values, would you assume at the same time that it was not good for its promissory notes for 90 days?

MR. STITT: I object to the form of that question.

THE COURT: Reframe it.

Q I am trying to explore your last statement, Mr. Bock, in which you said that there were entirely different considerations. Granted.

Now I ask you, if you had made an evaluation of a company which for common stock purposes was attractive as giving prospects of long-term growth and improvement and increasing profitability at some future date, can you conceive of a set of circumstances under which at thesame time you would come to the conclusion that it is not good for its paper due in the next 90 days?

A Looking at the long-term characteristics, the company, yes, could be in a position where if it worked out its problems, it may represent a good long-range equity investment. However, between the date that you consider your purchase and that long never-never land period of time, there could be hardships that the corporation would have to go through in terms of cash stringency, at which time I would certainly not be willing to make unsecured loans to that company without good, substantial background information to indicate to me that they are going to eventually work out --

Q Mr. Bock, didn't you lend a million dollars to Penn Central after this date?

A We invested a million dollars in Penn Central commercial paper on March 13, 1970.

Q Knowing of the cash stringency, right?

A Yes, I was generally aware that there was need for --

THE COURT: When was that purchase?

MR. PIEL: The following purchase was the purchase here in suit. Two purchases in March, 1970. One on March 13, one on March 16, each for a half a million dollars.

Q I show you an exhibit premarked 182 for identification, an article from the Wall Street Journal of --

THE COURT: I don't think you moved in PI yet.

MR. PIEL: I offer it in evidence.

THE COURT: Any objection?

MR. STITT: No.

(Defendants' Exhibit PI was received in evidence.)

Q I am showing you Exhibit premarked Exhibit A182 for identification, Mr. Bock, an item from the Wall Street Journal of February 5, 1970. I call your attention to the fact that this is now within almost a month of your next investment in Penn Central commercial paper.

I ask you whether you recall that you knew in February, 1970, that Penn Central had a $13,200,000 loss in the fourth quarter of 1969 at that time, whether you knew at that time of that loss?

MR. STITT: Is this reference to the Penn Central parent company or the Penn Central Transportation Company?

MR. PIEL: It is a reference to the information contained in this item, which I believe discloses that it is referring to consolidated results.

Q Do you have my question?

A I was not aware of this article. I may have seen it, but I certainly paid little heed to it. We had no investment in Penn Central Transportation Company as of February, 1970.

It would have been just of passing interest. My last maturity was December 29, 1969, and this was just another name on a sheet of paper.

Q Mr. Bock, as a man who follows the financial news from day to day and is the chief investment officer --

THE COURT: Wait a second. This clipping from the Wall Street Journal I assume is the newspaper report referred to in Plaintiff's Exhibit F-2.

MR. PIEL: Yes, your Honor, that is correct.

Q Mr. Bock, whether or not you remember this specific report, you do not deny, do you, that you were aware of the 1969 yearend results for the Penn Central before you bought the commercial paper from Mr. Bob Kaufman of Goldman, Sachs on March 13 and March 16?

MR. STITT: With reference to the transportation company.

A I have no recollection --

THE COURT: This is the whole thing, isn't it?

MR. PIEL: Yes, I am referring to the whole thing.

THE COURT: This is a consolidated return. It is not just the transportation company.

MR. PIEL: It makes separate reference to the operating losses.

MR. STITT: I don't want the Court to lose sight of the fact that the paper bought is the transportation company, your Honor, and not the parent, Penn Central Company.

THE COURT: Yes, but it also refers to the transportation company in here, doesn't it?

MR. STITT: I don't have the article in front of me, but I have no reason to dispute that fact.

THE COURT: "Mr. Saunders noted the Penn Central transportation company, the company's railroad subsidiary, had a $16.1 million loss in the fourth quarter, sharply wider than the year earlier loss of $2.6 million. For all of 1969 he said the railroad losses amounted to $56.3 million, more than 10 times as great as the 1968 loss of $5.2 million."

That is the article. Go ahead.

BY MR. PIEL:

Q Mr. Bock, you are not asking the Court to believe that you didn't know this news before you bought those notes in March, are you?

THE COURT: Sustained. Reframe your question.

Q Mr. Bock, before you bought the Penn Central Transportation Company notes on March 13 and March 16, you were aware, were you not, of the fourth quarter results and the 1969 results of Penn Central consolidated?

A No, I was not, Mr. Piel. I had a general awareness that the company was still facing hardship.

Q You had a general awareness, did you not, that it was still on a decline?

A That is hardship in my opinion.

Q A hardship which was an increasing hardship, isn't that right?

A As I mentioned to you before, this was of passing interese to me on February 5, 1970.

Q You had owned the common stock, you had been in the commercial paper twice before, and you were about to buy it again, and you say it was only a passing interest?

A Sir, I wasn't about to buy it again on February 5, 1970. I bought it in March of 1970.

THECOURT: Wait, are you telling me that you had no knowledge of the progressively worsening condition in Penn Central when you went out and bought a million dollars worthof their commercial paper?

THE WITNESS: I said I had a general awareness that the company was still in a hardship situation.

THE COURT: Getting worse, not getting better, though. That is the point, I think, of Mr. Piel's questions to you. These documents that I have read being handed up indicate to me that the condition was getting worse every quarter, not staying stagnant. Mr. Saunders here says that the loss for the year was 10 times as great as the loss for the year before.

MR. PIEL: No secret about it.

THE COURT: I don't understand it. All right. Are you moving this in?

MR. PIEL: I move its admission, your Honor.

THE COURT: All right.

(Defendants' Exhibit A182 was received in evidence.)

Q I show you Exhibit premarked for identification A180, a Wall Street Journal article of Thursday, February 26, 1970, and ask you whether you recall seeing that item of information at the end of February, 1970, Mr. Bock?

A I cannot recollect having seen this article.

Q You are referring to this specific report?

A That is right.

Q What about its contents? You were aware, were you not, that Penn Central again had passed a dividend?

A Yes, that was within my purview at that time.

Q Indicating to you a continuation of cash stringency, of tightness for cash?

A I was aware that they still were in a cash shortage position.

Q Incidentally, while Franklin Savings Bank was a stockholder from June, 1968, until April 23, 1969, it received those reports which Penn Central sent to its stockholders, did it not?

A We have our name and nominee, Savings Bank Trust Company, and I don't recall that the information was forwarded to the bank.

Q Doesn't the nominee as a matter of course forward--

A No, sir.

Q -- information?

A They may or may not.

THE COURT: I think in view of my experience with various class actions, I would not assume that as a matter of course it sent it. You may ask the brokerage firm to send it, for example, but we get too many complaints about not having received things for me to assume that every person gets their annual reports from their nominee, in this case the Savings Trust Company.

Q The Savings Bank Trust Company is organized and operates in order to serve the savings bank, isn't that right?

A That is correct.

Q As such, you savings bank patrons of this organization see to it that it gives you good service, I assume?

A That is correct.

Q Don't you ask them to forward to you communications received from corporations in which you own stock?

THE COURT: But it doesn't follow from that that the direction is complied with.

A That is correct.

Q You do ask?

A We have asked and on occasions we have gotten it. Other times we have not.

Q Do you know what the fact is as to communications sent to you by the Penn Central Company in which you owned stock?

A I recollect --

THE COURT: You mean being forwarded by the nominee to him?

Q Being forwarded by the nominee.

A I cannot say whether we received it or whether we did not receive it.

MR. PIEL: I offer in evidence, on that testimony which I think entitles us to make some assumptions of compliance with requests in the absence of other evidence, the annual report for --

THE COURT: I will not assume that he received it. Ask him whether he ever read it or ever had seen it.

Q I show you A21 for identification, a copy of the annual report of the Penn Central Company for 1968. I ask you to look it over and tell us whether as the top investment officer for the bank which held an investment you saw that while you were holding the stock?

A It would be impossible for me to say whether I saw it or not, Mr. Piel.

Q You can't say that you did not see it?

A I don't recollect having seen it. I do not.

MR. PIEL: I offer it in evidence.

MR. STITT: Do I understand that Exhibit 180 as well as A21 are being offered?

MR. PIEL: Oh, yes.

THE COURT: 182 is offered and received. A180 was marked for identification.

MR. PIEL: I now offer it, your Honor.

MR. STITT: Your Honor, on the basis of the representation and subject to my objections as to hearsay, which your Honor has been overruling, but on the fact that it has been identified and represented as coming from the files of Goldman, Sachs, I take it that the Court would overrule my objections to hearsay and receive Exhibit 180, and if I gather the same representation is made as to A21, that that, too, comes from the files of Goldman, Sachs, I would assume the Court would make the same ruling.

MR. PIEL: Yes.

THE COURT: Same ruling. Admit them both.

(Defendants' Exhibits A180 and A21 were received in evidence.)

THE COURT: This annual report is -- oh, it is for the year 1968, I am sorry.

MR. PIEL: That's right, received in March, 1969.

THE COURT: All right, go ahead.

BY MR. PIEL:

Q I show you Exhibit premarked for identification A17, appearing to be a copy of the notice of annual meeting and proxy statement of Penn Central Company dated April 10, 1969.

I ask you, Mr. Bock, whether your custodian service company, the Savings Bank Trust Company, wasn't under standing instructions to send to you notices of meetings and proxies for your consideration?

A Yes, I believe that they were under instructions to present proxies to us.

MR. PIEL: I offer this in evidence, your Honor.

THE COURT: Any objection?

MR. STITT: Is the witness going to be asked whether he has seen it, your Honor? If it is represented it comes from the files of Goldman, Sachs --

MR. PIEL: It does.

MR. STITT: Then I would think that would qualify it.

THE COURT: Have you seen it?

THE WITNESS: I don't recall having seen -- this is proxy material, it is quite voluminous. I don't quite recall it at all.

Q If you read it all it might bring something back to your mind?

A It's possible.

MR. PIEL: I think we will save time, I will not ask you to do that. I offer it in evidence.

MR. STITT: My position is, your Honor, since it is represented it comes from the files of Goldman, Sachs, I would think it would be received on that ground.

THE COURT: Received on broader grounds than that.

(Defendants' Exhibit A17 was received in evidence.)

Q I have just got one final document chore here to bother you with, Mr. Bock. You have told us that you did see brokerage reports coming regularly over your desk.

A Not necessarily of Penn Central, but reports on various and sundry companies.

Q Can you tell us whether or not you saw any brokerage reports with regard to Penn Central?

A I don't recall any on Penn Central.

Q I am going to show you a number of exhibits, I will just recite them and hand them over to you so that you can turn them over and answer one question about all of them, I will identify them for the record, these are premarked Exhibits for identification DH, February 16, 1968, study and report on Penn Central by Kidder, Peabody & Company --

MR. STITT: Your Honor, may I ask a preliminary question through the Court of my adversary, and that is whether he is representing these documents come from the files of Goldman, Sachs?

MR. PIEL: I so represent -- I can't make that representation with respect to all of these documents. I am not offering them at this time. I want to ask Mr. Bock regarding them. That may determine whether I offer them or any of them. Some of them were in the Goldman, Sachs credit file or library file. Others were not.

THE COURT: The first one for identification is --

MR. PIEL: DH.

THE COURT: Next one?

MR. PIEL: Next is Exhibit DI.

THE COURT: Next one?

MR. PIEL: Butcher & Sherrerd --

THE COURT: That's the fellow referred to in that --

MR. PIEL: March 7, 1968.

THE COURT: -- marketplace document in The New York Times?

MR. PIEL: Yes. Mr. Butcher of Butcher &

Sherrerd was referred to in that article. This is his firm in Philadelphia. It is their report on Penn Central Company as of the date I mentioned.

MR. STITT: Which is March 7, 1968?

MR. PIEL: That's right.

MR. STITT: The other is dated February, 1968, DH?

MR. PIEL: Right. DJ, a study on -- by William O. Witter, Inc., on Penn Central, dated October 4, 1968.

DK for identification is a short report by Loeb, Rhoades & Company on December 18, 1968.

DL is a report on the Pennsylvania New York Central Transportation Company, which was the name of the merged company before it was changed to Penn Central Company and then later the Penn Central Transportation Company. This was dated January 2, 1969, by Equity Research Associates.

DU --

THE COURT: Wait. You have sporadic rhythm here. DH, I, J, K, L. You skip to what?

MR. PIEL: We skip, after L we skip to DU. This is a report on Penn Central Company by H.C. Wainwright & Company of February 7, 1969.

MR. STITT: Is that February 7 or February 5?

MR. PIEL: I beg your pardon. It is a "Received" stam of February 7. It is correctly dated February 5, 1969.

DM, I am presenting these in their chronological order, your Honor, which is why the letters are off, is another report by H.C. Wainwright & Company dated February 20, 1969.

DS is a report of August 14, 1969, prepared by Josephthal & Company, dated September 9, 1969 --

MR. STITT: Isn't that August 14, 1969?

MR. PIEL: Thank you for the correction. August 14, 1969, Josephthal & Company.

DP is another report by Equity Research Associates dated September 9, 1969.

Exhibit J is another report by H.C. Wainwright & Company dated November 14, 1969.

MR. STITT: Is this DJ?

MR. PIEL: No, just J. DV, another report by H.C. Wainwright & Company dated December 23, 1969.

DW, a report on Penn Central Company by Loeb, Rhoades & Company, dated January, 1970.

Q I am going to ask you to just turn those over in front of you and look at them long enough to tell us which if any of those reports you saw or that came across your desk, to the best of your recollection.

A I have no specific recollection on any of these, Mr. Piel. I certainly can rule out Wainwright & Company reports. Wainwright & Company offers their investment reports in exchange for commission business. We had never done business with Wainwright & Company, we are not prepared to, so I can state positively I have never seen those.

Equity Research Association is a foreign name to me, I never heard of it. I presume that it may be a service that you have to buy, but I am not sure. I would now know about that.

Loeb, Rhoades & Company, we had one or two trades with Loeb, Rhoades & Company, but we are not really a big customer with them. There may have been sporadic trades. But I do not remember the Penn Central report.

Josephthal & Company is a name that I heard of but I don't recall ever having seen that report or that they sent it to the Franklin. We have never had a trade with Josephthal & Company.

Butcher & Sherrerd is a Philadelphia organization and I know that I never got anything from them, even if they were in the forefront of the Penn Central situation.

Kidder, Peabody, we did do business with them, and it is possible that they may have sent in a report, but

I don't know it.

Q You mentioned the fact that brokers send you reports to try to interest you in their services; is that right?

A That is true. This is on limited fashion.

Q You are not suggesting that Loeb, Rhoades would not send you their reports merely because you were a small customer of theirs?

A I would think, if I understand your question correctly, if we do not do a sizable business with them, I don't know what that would mean in terms of your estimation as against mine -- I don't think we get their report.

There are some companies that are trying to make their way and they would submit their report. We get reports today from Canadian firms and we are not allowed to buy Canadian securities, except payable in U.S. dollars, and I am talking about the debt obligations. We get a whole random list of offerings.

Q You are not suggesting that Loeb, Rhoades is above trying to make its way?

MR. STITT: If your Honor please, I do object.

A I am not, sir.

MR. STITT: At this point --

THE COURT: It is getting a little late in the afternoon. We only have a half-hour to go.

MR. PIEL: I th[illegible]. I have possibly as much as another 50 minutes or an hour.

THE COURT: Let's go. When we get to 4.30 or a quarter of 5, we will see if you can find a nice place to stop.

MR. PIEL: I would appreciate a brief recess at this time to try to reorganize my notes. It will move a little faster.

THE COURT: We just had one 40 minutes or so ago.

Q Is it a fact, Mr. Bock, that you at no time had any discussion with any of the Goldman, Sachs salesmen about Penn Central?

A From the standpoint of wanting financial information, are you talking about?

Q Yes, of any kind.

A That is true.

Q You had no discussion with any of them about any of these news items that appeared, as far as you recall?

A I had no discussion with the sales representatives that called me on the phone.

THE COURT: What about the ones you called on the phone?

THE WITNESS: The ones I called on the phone as well, sir.

Q I didn't hear that.

A The ones that I called on the phone as well. My answer would be --

THE COURT: He had limited his answer merely to those who called him. I gathered he called them many times.

THE WITNESS: Right.

Q If any statement were made to you about Penn Central, it was only in pieces of paper that were mailed to you with confirmations of purchase; is that right?

A I cannot answer that question because we have a cutoff date here, Mr. Piel. Are we talking about after the date of purchase?

Q I am talking about up to your purchase.

A Up to my purchase, that is true.

Q In connection with the purchase that you made on March 16, 1970, over the telephone with Mr. Kaufman, did you check up on anything about Penn Central or read anything about Penn Central?

A I did not.

Q Mr. Stitt asked you whether you at some time saw a green sheet.

MR. STITT: Is this reference to Exhibit F84?

MR. PIEL: Yes.

Q Reference to Exhibit F84. Do you recall that this morning?

A Yes, the one dated February 18, 1970, at the bottom?

Q Yes.

A Am I to answer a question here?

Q I was directing your attention to that testimony you gave this morning preliminary to asking you a question about it.

MR. STITT: May we have the document placed before the witness, your Honor?

THE COURT: Yes. This is F84?

MR. PIEL: F84.

Q You said that underlining on that document was yours?

A That is right.

Q Is it your impression at this late date that you did that when you received it?

A No, I don't believe I testified that that was the date. You asked me, Mr. Piel, whether or not I had read this prior to the purchase on March 16. I am unable to answer that question because I don't know when I received this. It is possible I received it after the 16th. It would depend on the mail, you see.

Q That was received, I believe your testimony is, or a copy of it was received with the confirmation of your purchase on March 13 at some point?

A It was received out of the purchase transaction of March 13, but it was not received with the letter of confirmation necessarily. I have seen these come in as separate pieces of correspondence, not accompanied by the letter of confirmation.

In some cases the letter would come in separately and this would be follow-up information, presumably from another department of Goldman, Sachs.

Q You also saw this morning the confirmation slip sent to you in the mail. It had checked off on it that financial information was enclosed, right?

A Right.

Q And that was checked off again on the confirmation of the purchase on the 16th?

A That is correct, but that doesn't necessarily mean that it was there. I have seen instances when it did not arrive with the letter. It came a day or so later.

Q In this case, a confirmation of a Friday purchase that was put in the mail and sent to you later on might have got to you any time during the following week, is that so?

A That's a reasonable statement.

Q So there is no basis for saying that you had it or read it before you made the call on the 16th to Mr. Kaufman?

A Very good.

MR. STITT: I object to the form of the question, your Honor.

Q Is there any basis? There isn't any basis, is there, for saying that you could have read that before you made your 10 o'clock call to Mr. Kaufman on the 16th?

MR. STITT: Your Honor, I do object to the form of that question.

MR. PIEL: I will withdraw it. I think he has answered it, anyway.

THE COURT: I don't see how he has answered it. He says that this could have come in any time, with or after the receipt of the confirmation of the purchase of March 13.

Q In normal course, Mr. Bock, the confirmation of the purchase on March 13 would be mailed to you by Goldman, Sachs after the purchase had already been accomplished, isn't that right?

MR. STITT: I object to the form of that question. After? How long after? The afternoon? The same day? A week later?

MR. PIEL: We will come to that.

THE COURT: I think you better specify it in the question.

MR. PIEL: We will start again.

Q When you made your purchase of a note on March 13, Goldman, Sachs delivered that note that day to your agent to receive it, isn't that right, either Savings Bank Trust Company or Chemical Bank for them?

A I don't know what the settlement date was. It may have been on the Monday. I am not sure. I don't have the sheet here.

THE COURT: Let's get the receipt out.

MR. STITT: Your Honor, I give my adversary Exhibit F83, which is a group of documents relating to the Ma[illegible] 13 purchase.

Q Does that refresh your recollection that the note was bought for same day settlement?

A That's right, the settlement was expected the same day as the purchase was made.

Q That meant that it had to be delivered to Savings Bank Trust Company or to Chemical Bank as their physical custodian that day, doesn't it?

A You are talking about the piece of paper, the commercial paper?

Q Yes.

A Yes, it should have been delivered, and let me read to see whether or not indeed it was. The confirmation from Savings Bank Trust Company indicates that it was on the 13th.

Q That's part of that same exhibit?

A That is right.

Q It was paid for in Federal funds transferred to Goldman, Sachs' account at that moment of delivery, wasn't it?

A So far as this record shows, yes.

Q And your account with Savings Bank Trust Company or Chemical as its custodial agent was charged with those Federal funds?

A That is right.

Q So at that moment your agent had received delivery of the note for you and you had paid for it?

A For that day, yes.

Q On that same day?

A Right.

Q That first sheet of that exhibit that you are looking at, is that your handwriting?

A Yes, it is.

Q Is that your advice to the comptroller of Franklin Savings?

A That is right.

Q To carry out the completion of this transaction pursuant to your order?

A The first sheet in my handwriting is merely the purchase order which goes to my comptroller's department, and they follow up from there.

Q They follow up from there, including making a notation on the books of account at Franklin Savings that it had bought a note and debiting its Federal funds account with the bank?

A That is correct.

Q Following that delivery of the note to your agent, that would take place in the afternoon some time; is that right?

A I don't get into the mechanics of it, but I presume that's a reasonable expectation.

Q Then at some time after that, Goldman, Sachs mails you a confirmation and attaches whatever information is sent with it?

MR. STITT: Objection.

THE COURT: What is your objection?

MR. STITT: Again to the "some time after."

THE COURT: It is dated March 13.

MR. STITT: Yes.

THE COURT: You brought out that it was received in the mail. What is your objection?

MR. STITT: As long as it seems that it was mailed out on March 13, if that is what counsel is referring to, then I have no objection.

MR. PIEL: This witness wouldn't know when it was mailed out. He might know when he received it.

BY MR. PIEL:

Q Do you know when you received it?

A No, I have no idea when I received it.

Q It could have been any time the following week?

A It is possible, but I --

THE COURT: Do I gather that March 13, 1970, was a Friday?

MR. PIEL: Yes, your Honor, that was established this morning, that the 16th was a Monday.

THE COURT: I know they established the 16th was a Monday in February, wasn't it?

MR. STITT: No, that was March, your Honor.

Q Now I ask you if you will again look at F84 and ask you whether various portions of that were underlined by you?

A Yes, it was.

Q Do you know when those underlinings were put on by you?

A I have no recollection when the underlinings were made.

THE COURT: Didn't you testify this morning you made the underlinings when you received it -- when you read it, rather?

MR. PIEL: No. He said that he circled it for filing, I think.

THE COURT: I think he also said he underlined it. Go ahead.

MR. STITT: I believe that was the testimony, your Honor.

Q But this afternoon you don't know when you underlined it; is that right?

MR. STITT: I object to the form.

THE COURT: He means the date.

THE WITNESS: The date, that's right.

THE COURT: He underlined it when he read it, but he can't tell you the date when he read it.

MR. PIEL: I see. I thank you.

Q You might have read it at some much later date, in other words?

A It is possible.

MR. STITT: I object to "much later."

THE WITNESS: It is possible.

Q It is possible?

A It is possible.

THE COURT: What he said this morning was the underlinings on the green sheet were made by him when he received it through the mail.

MR. PIEL: And this afternoon he has told us that he doesn't know when he received it.

THE COURT: He doesn't know when he received it, that's right.

Q Let me ask you this question, the last question on this topic, Mr. Bock. Between your purchase on March 13 and your purchase on March 16, did you consult any sources of information with respect to Penn Central?

A No, I did not.

MR. STITT: Are you excluding the possibility of the green sheet of February 18?

MR. PIEL: We have an answer on that subject, Mr. Stitt. If there is any question about it, I will read from the deposition.

MR. STITT: No, no.

THE COURT: It could have been, but he doesn't know.

Q Mr. Bock, in your deposition in this action, which, of course, is some time ago, were you asked these questions and did you give these answers, with reference to the underlining --

MR. STITT: Page, please.

Q Page 30, with reference to the underlining on Exhibit F84:

"Q Is the underlining on the first page of," and then the previous exhibit number, "yours, Mr. Bock?

"A Yes, it is.

"Q Do you know when it was made?

"A I cannot say when it was made.

"Q Would it have been at the time the document was received, whatever that date might have been?

"A I don't believe so."

Did you so testify?

MR. STITT: Would you read the next two questions?

Q "Q But you don't know when it was done?

"A I would not honestly say when it was done."

MR. STITT: "I could not honestly say when it was done."

Q Is that your testimony?

A Yes, it was.

Q With respect to F84, what you told us this morning, the circle around the name of it indicated that that is where you wanted your secretary to file it.

Let me ask you this. Why did you keep that file? Was that partly so that bank examiners coming in would see that you had some information relating to your investment?

A Yes, that is the answer.

Q So it was useful for that purpose to receive this document, even after the transaction?

A Yes, it would be.

Q This morning you said that in your initial conversation you told -- Mr. Bruno, was it?

A That is correct, if you are talking about the first call.

Q The first call. You told Mr. Bruno that you required paper that was rated prime?

A The first call was strictly an introductory call, a courtesy call, to invite me to luncheon. The call that I presume you have reference to is the day when we placed the first day.

Q When you placed the first order?

A Yes.

Q At that time in telling him that you wanted him to mention names available for your maturities in amounts you told him, in accordance with the new change in the banking law, it had to be prime-rated; is that right?

A That is correct, and, in addition --

Q And you --

THE COURT: Wait.

MR. STITT: He is in the middle of an answer.

THE COURT: He is in the middle of an answer.

MR. PIEL: I am sorry. I didn't realize that.

A Not only did I ask that it be rated prime by NCO, I told him that I wanted paper of prime quality.

Q This morning you told Mr. Stitt what you meant by prime quality, correct?

A Yes, I believe I did.

Q You didn't stop in that telephone conversation to tell Mr. Bruno what you meant by prime quality, did you?

A I did not spell out all the yardsticks that would be necessary to establish prime quality in just those two words. Prime quality is a --

Q Kind of a general idea?

A It is a general idea, yes, it is.

Q Isn't it the idea that, really, the idea behind the banking law, that something that is rated prime by NCO is prime quality, that's the standard, isn't it?

A It would be expected to be so. However, as I pointed out, the Franklin has always been a very careful investor, and it wanted to do business with brokers and bond dealers who were very close to their sources of information and contacts.

THE COURT: That isn't what we are talking about. We are talking about prime quality now.

MR. STITT: I believe that is what he was getting to, your Honor.

THE COURT: I don't consider that as having anything to do with prime quality. We are trying to find out what he told Mr. Bruno, which is awfully important in this case.

He says he wanted commercial paper that was rated prime and of prime quality. The question to the witness is did he spell out for Mr. Bruno what he meant by prime quality. I gather he did not.

MR. PIEL: That's where we stand.

MR. STITT: I believe the question went further than that, your Honor.

THE COURT: No, I don't think it did.

Q Incidentally, you told your counsel this morning with regard to all these mattera that he asked you about, information, whether or not it had been given to you or known to you, that you didn't know about it from any source until after the commencement of this action; is that right?

A That is correct.

Q So you authorized the commencement of this action against Goldman, Sachs before you knew why it was being commenced; is that right?

MR. STITT: I object to the form of that question.

THE COURT: Overruled.

A Would you repeat the question, becausethis is -- while I am the chief executive officer of the bank, the litigation was by virtue of a decision of the board of trustees of the bank.

MR. PIEL: Read the question, please.

(Record read.)

A (Continuing) I simply don't know how to answer that question.

Q Were you a member of the board of trustees?

A Yes, I was.

Q Then I think that's all the answer I need, Mr. Bock. I want to ask you whether it may be the case that this idea that you said to Mr. Bruno not merely "I want it prime-rated but it's got tobe prime quality, too," whatever that means, is that an idea that has crept into your mind on this subject since the year 1971? Is that possible?

A No, it is not possible at all.

Q Did you make an affidavit to the SEC after the commencement of this action reciting and completing complaints against Goldman, Sachs with regard to this matter?

MR. STITT: If your Honor please, the affidavit before the SEC speaks for itself.

THE COURT: Wait a second. He is entitled to ask him whether he made one.

Q Did you, Mr. Bock?

A Yes, I made a statement before the SEC.

Q I show you Exhibit PU for identification, which I am not offering, I simply ask you if this is the affidavit that you made? This is a copy.

A Yes, based on a fast look at it, I would say that was it.

Q Mr. Bock, when you made that affidavit, you were about four years closer to the events than we are now, isn't that right?

A Yes.

Q And you were trying to testify truthfully in your affidavit then?

A Very much so.

Q As you are now; is that right?

A Correct, that is right.

Q Did you say in your affidavit, Exhibit PU for identification, starting at the foot of page 3, "Franklin made a total of five separate purchases of Penn Central commercial paper to Goldman, Sachs. The first purchase was made in September, 1968, two more in August, 1969 and two in March, 1970. All were made with the verbal assurance of the Goldman, Sachs sales representative that the notes were prime rated.

"The paper of other nationally known companies similarly rated prime was also bought from Goldman, Sachs during the foregoing years. In each transaction with Goldman, Sachs it was understood that the bank could legally purchase only commercial paper during a primerating."

Is that what you told the SEC in 1971?

MR. STITT: Would you read the next sentence so we will have the entire context?

MR. PIEL: That is not part of any testimony about communications with Goldman, Sachs.

THE COURT: You may do it on redirect.

MR. STITT: Yes, sir, I will take that opportunity.

A Yes, those are my statements.

Q Those were your statements at that time?

A Yes.

Q Mr. Stitt asked you a number of questions this morning about matters appearing in Goldman, Sachs' blue sheet memoranda, including the question of whether or not had you known it it would make a difference to your purchase decision at the time . With regard to the fact that the Penn Central did not have 100 per cent bank line coverage for outstanding commercial paper, you did not at any time inquire what the coverage was, did you?

A No, I did not.

Q And isn't it a fact that there are a great many issuers at that time, I am going back to 1969 and 1970, that there were many issuers who did not have a 100 per cent bank line --

MR. STITT: I ask for clarification of the word "many."

A There were certain companies that obviously did not have full coverage of their bank lines of credit, depending upon their credit standing in the eyes of the investor -- I don't know whether you are asking me whether or not I would require that in every case of a commercial paper purchase that I would expect that there be 100 per cent coverage.

Q I will ask you that.

A In certain cases for a nationally prominent company that had an enviable record, that would not bother me too much. However, if we got into a borderline situation, I would be looking for that reassurance.

Q If you had a corporation that had enormous reserves of some kind of value, a warehouse full of rubies, would that make you feel better about their not having 100 per cent bank line coverage?

MR. STITT: Objection.

THE COURT: Sustained.

Q In any event, you knew then that certain companies did not have 100 per cent bank line coverage?

A You are asking information which I would only have knowledge of if I were on the other side, on the sales side. It would not be within my province to be able to say whether at that particular time it was the practice for certain companies not to have 100 per cent coverage or 50 per cent coverage.

But I would assume, as I have just testified here, that in certain instances the investor would not be looking too hard at a lack of full coverage.

Q So that it is on the one hand a matter of judgment for the person who is assessing the credit and the matter of market acceptability insofar as the investor is con-concerned; is that right?

MR. STITT: Objection.

THE COURT: Overruled. Let me understand this. You say you never inquired as to whether there was any bank line of credit against Penn Central commercial paper; is that correct?

THE WITNESS: I have never made an inquiry of Goldman, Sachs as to whether or not there was complete coverage of bank lines of credit. However, the memoranda which they sent to me indicated that they did have some, so therefore the question was not necessary.

THE COURT: But that memorandum, you say, you could have received after you purchased the commercial paper in question?

THE WITNESS: That is possible.

THE COURT: You weren't really interested in whether there was a bank line of credit, were you?

THE WITNESS: That was not a cardinal yardstick out of all the others that I can think of here.

Q Mr. Bock, I show you this piece of paper that was sent to you that you read at some time or other and I ask you where in there it indicated anything about bank lines? Exhibit F84.

A I would have to retract my statement there. I was confusing banks of deposit with lines of credit being extended.

MR. PIEL: May I point out Mr. Bock is referring to the second page of this document which shows the list of principal banks of deposit with the Penn Central Transportation Company. Without counting them, it looks to be about 20.

Q You recognize among those banks leading commercial banks of the United States?

A Oh, yes, I recognize them very much so.

Q What is the purpose, as you understand it, of giving that information on sheets that are sent out to investors?

A This indicates the large amount of collections, transfers and bank operations that Penn Central needed, and they required a large number of banks in various locations to handle the business.

Q Mr. Bock, isn't it a fact that the people who are in the commercial paper market day after day are institutional investors and professional investors like yourself?

MR. STITT: Objection to the form of that question.

THE COURT: He hasn't put the question yet.

Q Isn't it a fact,from your knowledge of Wall Street and of the financial community, that the people, investors, who come day after day into the short-term money market to buy half-million and million-dollar blocks of commercial paper are professional investors?

THE COURT: The witness has admitted that he is known as a professional investor.

MR. PIEL: I am asking him whether the other people who are buying are also professional investors.

MR. STITT: You mean all of the other people?

THE COURT: Who buy regularly.

MR. PIEL: I am asking him about persons who are regularly in the short-term market.

A I would have no feel for that. I would assume that the large institutional investors, yes, would be put in that category.

Q Yes, I want to ask you whether it isn't the fact or a fact known to you that the reason bank names are put on that information that is sent out to professional investors is so that, if they want to, they can call up the banks and investigate the credit lines?

A I wouldn't assume that at all.

Q You wouldn't?

A No, I would not.

Q When a very large business enterprise has complicated banking arrangements with many commercial banks, different kinds of loans maturing at different times and different kinds of lines of credit, as they are called, as distinguished from loans, in other words, arrangements with the bank for some future take-down of money needed, isn't it true that the amount of credit that's outstanding or available on any one day or, say, any one week will vary, will vary from week to week?

A Oh, yes, very much so.

Q So that it would hardly be helpful to investors to put down information about bank lines that might be different the next day, would it?

A That is true, but as of the date that it was written and submitted, it would be important information.

THE COURT: All right, we will adjourn for today. Does that conclude this area?

MR. PIEL: Yes, your Honor.

THE COURT: 10 o'clock tomorrow morning. How much more time do you need with the witness?

MR. PIEL: I will cut it down to a half-hour, 40 minutes.

MR. STITT: I will have very, very little redirect. Then I will have a few housekeeping chores and documents which will take a few minutes.

I will now ask my adversary who he might be callingtomorrow so I could prepare.

MR. PIEL: Is this Mr. Stitt's last witness?

THE COURT: I gather he is resting. First he will take care of some housekeeping chores.

MR. PIEL: Our first witness will be George Van Cleave.

THE COURT: How many other witnesses will you have? We will go to the same time tomorrow.

MR. PIEL: We have other witnesses ready, although I think Mr. Vam Cleave is going to be a very substantial witness. He is going to take care of a lot of the job for us. He might go all day. If we finish with him, Mr. George Doty, one of the partners, head of the administrative operations of the firm, is next.

THE COURT: See you tomorrow at 10 o'clock.

(Adjourned to June 4, 1975, at 10.00 a.m.)

FRANKLIN SAVINGS BANK OF NEW YORK

vs. 71 Civ 882

GUSTAVE L. LEVY, et al

New York, June 4, 1975
10:00 a.m.

* * * *

Trial resumed.

* * * *

HARRY H. BOCK, resumed.

CROSS EXAMINATION CONTINUED

BY MR. PIEL:

Q I am going to show you a copy of Plaintiff's Exhibit F-32 which was received in evidence yesterday. This is a commercial paper brochure by Goldman, Sachs & Company. You testified yesterday that you received that brochure from Goldman, Sachs?

A. Yes, that is correct.

Q On your deposition in June 1972, Page 9, were you asked these questions and did you give these answers:

"Q Who at Goldman, Sachs first communicated with you with respect to commercial paper?

"A. The representative with whom I dealt was Mike Bruno.

"Q Do you remember how he first communicated with you? Was it by phone, at a meeting?

"A. It was definitely by phone. I don't recall any office visit."

I will interrupt there. You were referring there to a visit to your office, is that right?

A. That is correct.

Q Because you told us about your visit to their office?

A. That's right.

Q "Q Do you remember the substance of the first phone conversation?

"A. No, I cannot remember. I presume, though, he offered his services, were we in the commercial paper market, interested in making any purchases."

MR. STITT: The word "and" should be inserted.

Q "Were we in the commercial paper market and interested in making any purchases. Just the normal type of inquiry that a salesman would want to make to a potential purchaser.

"Q Do you remember any communications from Mr. Bruno or anyone else, other than conversations that simply involved sales of paper to you? In other words, any other preliminary conversations discussing the market as a whole or the services that Goldman, Sachs had to offer?

"A. I believe that I got something from Goldman, Sachs outlining their services in the commercial paper field, but I have no record of it in my office. It is possible I either destroyed it or found it no longer of any value to me."

Did you so testify?

A. Yes, I did.

Q. By the way, at some point Mr. Bruno left Goldman, Sachs and your account was taken over by Mr. Robert Kaufman, is that right?

A. I don't believe he left Goldman, Sachs. He was transferred to another operation. I believe agency security sales.

Q. When did that happen?

A. I have no knowledge of when it happened, but obviously between the time that Bruno was calling and Kaufman took over.

Q. When was that, do you recall?

A. During the period of our relationship, but I have no knowledge as to exact dates.

Q. With regard to your conversation with Mr. Bruno, your counsel has put in evidence here excerpts from Mr. Bruno's deposition in this matter without objection by us, so this is now in evidence, and I read it to you to see if it can assist in refreshing your recollection --

THE COURT: As to what?

MR. PIEL: As to his conversation with Mr. Bruno.

Q Page 18, question by plaintiff's counsel to Mr. Bruno:

"Q Well, did you discuss the quality needs of the bank?

"MR. GRAHAM: I object to the form of the question.

"Q Well, did you discuss the type of paper that might be suitable for a savings bank?

"A I think we certainly discussed that there had to be an officially prime-rated company by NCO for the bank to invest in.

"Q Was Mr. Bock investing in any criteria beyond the legal NCO prime requirement?

"A To my recollection, no.

"Q Did you discuss the advantages of buying commercial paper through a dealer as opposed to direct issuers?

"Q I don't recall any particular conversation with him like that, but it is possible."

Taken together, Mr. Bock, with your affidavit to the SEC in 1971, which is Exhibit PU for identification, does that refresh your recollection that your conversation with Mr. Bruno did not go beyond emphasizing that you were required by law to purchase only NCO prime-rated paper?

A. In answer I should have to --

Q. I think I am asking you if it refreshes your recollection to that effect.

A. Yes, it refreshes my memory, yes.

Q. As refreshed, what is your recollection?

A. My recollection is distinctly this. The reference to a preliminary conversation in my testimony referred to the opening courtesy call when Mike Bruno was endeavoring to find out who at the bank he should deal with on the telephone. A subsequent and more important telephone call is the first transaction when we first bought commercial paper from Goldman, Sachs, I believe it was September of 1968. At that time there was a distinct discussion with Mr. Bruno as to the credit rating and the necessity for prime quality.

THE COURT: Is it your testimony that the first telephone call was as you described it yesterday, sort of an introductory call, and that nothing was discussed regarding commercial paper, prime-rated and prime quality? In other words, what is your testimony as to what the content of the first telephone conversation was with Mr. Bruno?

THE WITNESS: My recollection of the first conversation with Mr. Bruno, it was obvious at that time that it had to be prime-rated paper --

THE COURT: Let's forget what was obvious. We are interested in what Mr. Bruno said to you and what you said to Mr. Bruno on the first time he called you up.

THE WITNESS: It was strictly a courtesy call, trying to establish a relationship with the bank, and would I be the one to telephone on --

THE COURT: That's all there was? There was no discussion, then, about commercial paper and prime-rated or prime quality?

THE WITNESS: That is correct.

THE COURT: That takes care of the first conversation.

Is your next conversation with Mr. Bruno the one which you keep referring to as the one when you purchased?

THE WITNESS: That is correct, your Honor. It was at the outset of that conversation when we were prepared to do business with Goldman, Sachs --

THE COURT: Wait, wait. Just limit yourself to my question. I am trying to find out what happened here.

So you are saying that the first call from Bruno was sort of an introductory call?

THE WITNESS: That is correct.

THE COURT: The second call from Bruno is when you bought the first piece of commercial paper?

THE WITNESS: That is right.

THE COURT: Do you want to go on from there?

MR. PIEL: Yes, your Honor.

BY MR. PIEL:

Q I read you Mr. Bruno's testimony in which he was asked generally without reference to any particular conversation --

MR. STITT: May we have the page, please?

Q Page 18, "Did you discuss the quality needs of the bank? Did you discuss the type of paper that might be suitable for a savings bank?

"A I think we certainly discussed that there had to be an officially prime-rated company by NCO for the bank to invest in.

"Q Was Mr. Bock investing in any criteria --"

MR. STITT: I believe that's been changed to "interested."

Q "Was Mr. Bock interested in any --"

THE COURT: Pardon me. What are all these interruptions? Haven't you corrected this deposition before now?

MR. STITT: Mine has been corrected, your Honor, and the one on file with this Court has been corrected.

THE COURT: Don't you have a corrected copy?

MR. PIEL: I am sorry, your Honor, apparently I don't have it in my hand. I didn't know about these corrections. I apologize.

THE COURT: Yesterday and today, every sentence that comes out, Mr. Stitt has a correction for you. I don't know how the record looks, but I hope it is coming out straight.

MR. PIEL: I apologize.

Q. "Was Mr. Bock interested in any criteria beyond the legal NCO prime requirement?

"A. To my recollection, no."

I ask you if that, taken together with your affidavit to the SEC made in September '71 in which you referred only to prime-rated, if that doesn't refresh your recollection that in your conversations with Mr. Bruno the only criterion you laid down for him was that it had to be prime-rated by law, by NCO?

MR. STITT: I object to the form of that question. It characterizes an affidavit, and as I am prepared to demonstrate, the characterization is not accurate.

THE COURT: From what was read to me yesterday, it is accurate. Go ahead. Objection overruled.

MR. STITT: He is referring to the entire affidavit. If he is just referring to the portion that he read yesterday, then I would have no objection.

MR. PIEL: That's all I am referring to.

THE COURT: That's all he is referring to.

MR. STITT: I am sorry.

MR. PIEL: The only part I am referring to is what the affidavit said about his conversations with Goldman, Sachs.

THE COURT: Go ahead, Mr. Piel. I overruled the objection.

MR. STITT: Your Honor, I --

MR. PIEL: Read the question, please.

(Record read.)

A. I have testified, and I still do, that in conversations with Mr. Bruno, which was your question to me, the matter of a prime-rated paper was mentioned and also I recollect that the matter of prime quality was also specified.

Q Without, however, any definition of prime quality? You told us that yesterday.

A. That is true.

Q With regard to the nature of commercial paper, you told us, and I am paraphrasing, the record will show your exact words, if you find my paraphrasing unfair since it is from recollection, please correct it, you told us that your conception of commercial paper was that it was short-term financing for, and then I have these words quoted from my notes, "a seasonal period of production, that it was self-liquidating" in the sense that it was using borrowed money for raw materials, turned into goods which would be sold to pay off the notes.

Is that right?

A. That is correct. That would be the most typical example that would be understandable.

Q. At the time that you purchased the first Penn Central note in September of 1968 you were at that time an investor in the common stock of the company, you had looked into it in the way that you told us, and I asked you when you ordered that commercial paper note, what was your understanding as to the raw material that Penn Central was going to turn into goods for sale?

A. There was no understanding, but it would be my general impression that the money at that time was to be used by the company to pay its suppliers, it could be for foods, goods or services, for possible receivables from companies that were doing business, transportation business with the company, to tide them over the receipt of those monies, when received then they would be used to repay the commercial paper ninety days later.

Q And then at the conclusion of the ninety days, another note might be issued?

A. That would be the operation of the company. I would have no judgment on that. I never rolled over any commercial paper.

Q You do know that many issuers roll over commercial paper constantly, don't you?

A. Yes, I do know that.

Q Including the ones that you would accord the highest rating, at least in terms of what they can get their money for the direct-issuing finance companies, is that right?

MR. STITT: Objection to the form of the question.

THE COURT: Overruled. It goes to his knowledge.

A. Yes, I have knowledge of that being done by certain corporations.

Q You do know that a big finance company will have hundreds of millions of dollars out in the commercial paper market constantly, rolling it over constantly, do you not?

A. Yes, I do know that.

MR. STITT: Your Honor, may I point out we are not dealing with a finance company in this case.

THE COURT: We are dealing with a form of commercial paper that this witness says is more attractive in the sense of the lower interest rate from the issuer's point of view. Go ahead.

Q. Do you know for a fact that Penn Central was not paying its suppliers?

A. No, I do not.

Q. Do you think it is possible to trace dollars from a corporation's total financing from all sources and tell whether the commercial paper money was used to pay the suppliers or not?

A. Never having been in that end of the business, I really couldn't say.

Q. You did tell us that you knew that public utility companies put out commercial paper?

A. That is correct.

Q. That's not a seasonal business, is it?

A. In some respects it is, where they are buying fuel supplies for the winter period, storage of fuel oil and storage of natural gas which they have to pay for, in a sense there is a seasonal aspect.

Q. You know that an issue of notes if sold to more than a handful of persons has to be registered with the SEC, unless it qualifies under the SEC's rules for commercial paper?

MR. STITT: I object to the form of that question.

MR. PIEL: I am asking him if he does know that.

A. In a general way I am aware of that, yes.

Q. Are you also aware in a general way that the SEC regards as valid commercial paper, exempt from registration, commercial paper of a company where its receivables and other quick assets exceed the amount of paper outstanding?

MR. STITT: Objection to the form of that question.

THE COURT: He is asking him does he know.

A. I don't have command of that answer as deeply as you do, but in a general way, yes.

Q. In a general way you appreciate that point?

A. I appreciate the point, yes.

Q. Which is really the point, is it not, that economically you can't trace dollars to tell which dollar paid which bill, isn't that so?

THE COURT: I think everybody agrees to that. I gather that commercial paper is used to take care of cash-flow problems of a short-term duration, and I think every purchaser knows that when he buys commercial paper, that is what he is doing. He doesn't know that his dollar is going to pay for a bunch of grapefruit.

Q. Were you aware from your studies of Penn Central that Penn Central's receivables -- Penn Central Transportation Company receivables -- were at all times in excess of about $240 million?

MR. STITT: May we have the time specified, your Honor?

MR. PIEL: During 1969 and the early part of 1970.

A. I have no knowledge of that exact figure, but I was aware that it must have been massive in size.

Q. You did look at certain ratios when you were buying the stock, didn't you, when your company was buying the stock, your bank? I am not asking you whether you remember the figure. I am asking you whether it is probable that you saw it at the time in looking over the financials.

A. I don't believe in stock analysis at that time that I would have been drawn so closely as to measure the current position of the company, which is a credit analysis as against the long-term viewpoint where we ride above the day-to-day affairs of the company.

Q. You look to the long-term future?

A. That is true.

Q. About Brown Brothers Harriman, as you originally answered Mr. Stitt's question about Brown Brothers Harriman, you assumed that Brown Brothers Harriman had not only taken Penn Central off its approved list for purchase of commercial paper, but was unwilling to continue its credit line, didn't you?

A. I am under that impression.

Q. You were under that impression? Then you answered but that to you, if you had known that, would have been a very disturbing factor?

THE COURT: Wait, wait. Yesterday was specifically limited to taking them off the list to buy their commercial paper, and they excluded whether he knew or not or whether Brown Brothers in fact had removed them from the credit line.

MR. STITT: This misunderstanding on the record was promptly corrected and the question was put to the witness --

MR. PIEL: I am not objecting to the form of his question. I am only pointing out to the witness preliminary to another question that he answered both questions. First he said it would be disturbing if he had known at the time that they had been taken off the approved list --

THE COURT: I take it from the evidence as it exists on the record today that he merely knows that they were taken off of the purchase of commerial paper list.

Q You do recall knowing when Mr. Stitt read to you from Exhibit F-4, Mr. Wilson's blue sheet of February 12, 1970, that Mr. Wilson's report was referring to a large New York firm temporarily taking the name off the approved list, did you not? I will read the portion I am referring to that Mr. Stitt --

MR. STITT: I am also going to ask, your Honor, that the additional information --

MR. PIEL: Maybe you would like to do that on redirect.

MR. STITT: -- which shows it was more than temporary be put to the witness --

THE COURT: Wait, wait. You put to the witness the quotation from this and said to the witness if he had known this would he have --

MR. STITT: Yes, sir, but I also read additional quotations, including testimony from Mr. Wilson's testimony, that made it quite clear that Brown Brothers never resumed the purchase of Penn Central --

THE COURT: That isn't the question.

MR. PIEL: Excuse me. That's not correct either.

THE COURT: Your question to this witness was if he had known that they had temporarily taken them off, not that they never resumed. Obviously, whether they resumed or not is immaterial in this lawsuit, as I understand the facts.

MR. STITT: Your Honor, I can only say that I most respectfully disagree with the Court's recollection of the question that I put to the witness.

THE COURT: Go ahead.

BY MR. PIEL:

Q This was the sentence I referred to:

"I told John that the large investor who had temporarily taken their name off their approved list did not wish to meet with him to review the 1969 figures, as they felt it would be awkward."

A. My answer would stand today as it did yesterday.

Q All right. I am just calling that to your attention preliminary to another question; that is, do you know of other instances in which investors have temporarily removed names from approved lists while they studied them?

A. Mr. Piel, is your question now --

Q Do you know of other such instances with reference to approved lists?

A. In my experience, I have no instances where names have been taken off investment lists, but that would cover the broad spectrum of common stock, preferred stock and corporate bonds, and my experience on commercial paper in that respect is not as great.

Q The decision is more apt to be made with respect to an issuer than with respect to a particular piece of paper, isn't it?

A. I would not agree with that statement, simply that there is a different appraisal made of commercial paper as against being a part owner in the business or a long-term creditor. In the commercial paper purchase, you are looking for a payout within a reasonable period of time, certainly by the maturity date of the piece of paper you have bought, and you are looking towards the satisfactory repayment of that at the maturity date.

Q Isn't it a fact that the investment committees and investing officers who make up these approved lists and change them from time to time sometimes apply criteria that have nothing to do with the credit of a particular company, such as saying "No investment for awhile in any transportation company"?

A. You are asking me a question beyond the range of my experience. I only know what I was engaged in. I can't speak for other institutions, investors.

Q Your experience, then, is New York Trust Company?

A. New York Trust Company, basically, and my own bank.

Q And your own present bank?

A. Correct.

Q Haven't you removed categories of companies by industry at times?

A. We don't have any approved lists, per se.

Q You don't use approved lists?

A. That is correct.

Q So that, in fact, you are not in a position to say what is the significance of the temporary removal of a name or the permanent removal of a name from an approved list, are you?

MR. STITT: Objection to the form of the question.

A. I believe I am in a very good position to expound on that.

Q Are the Brown Brothers Harriman the only bankers in the country knowledgeable about railroads?

A. I would say no.

Q Can you name some of the other leading institutions that are knowledgeable about railroads?

A. None that come to the forefront of my mind at the present time.

THE COURT: Goldman, Sachs.

Q If other knowledgeable banks continued Penn Central on their lists and bought for themselves and their clients at and after the time that it was learned that Brown Brothers had temporarily removed the name, would that affect your judgment of the significance to be attached to Brown Brothers' removal of the name?

A. It would have been interesting information, and the degree of conviction I would have as compared with one institution as against the other I can't tell you, because I don't know the names, but in the case of Brown Brothers, it does.

Q. That one you happen to know? Then it is fair to say, Mr. Bock, that that would be a matter that would have to be balanced as a matter of reasonable judgment, isn't that right?

A. That is correct.

Q. Did you tell us that Brown Brothers Harriman was a top-drawer investment banking house in the City of New York?

A. I used that expression.

Q. You used the "top-drawer" expression?

A. That is correct.

Q. Isn't it a fact that Brown Brothers Harriman is a partnership conducting a private commercial banking business?

A. In the sense that they are legally a partnership, yes, but beyond that, the substance of that partnership is unimportant in the eyes of the public.

Q. Is it the fact that Brown Brothers Harriman is forbidden by the Glass-Steagall Act to engage in investment banking? Do you know if that is a fact or not?

A. I do not know.

Q. So you don't know whether or not they are an investment banking house, do you?

MR. STITT: Objection to the form of that question.

THE COURT: Overruled.

A. I cannot go into the legal technicalities of it. They are to my way of thinking and my impression doing an investment banking business.

Q. If in spite of the fact that Brown Brothers Harriman removed the name from an approved list for commercial paper or commercial paper and other investors, Brown Brothers Harriman, in fact, continued an open-credit line and permitted that credit line to be exercised to the tune of $200 million subsequently in April, would that affect your opinion of the significance to be attached to the removal of their name from the approved list in February?

MR. STITT: I must object to the form.

MR. PIEL: Did I say 200 million? I meant $2 million.

MR. STITT: Not only to the form of the $200 million, but I draw your Honor's attention to Exhibit F-21 in evidence which showed that Brown Brothers had a standing line as of 1968 which was to continue in effect until 1973.

THE COURT: What is your point?

MR. STITT: My point is that Brown Brothers Harriman in honoring any commitment under this line of credit in the year 1970 would be doing just that, keeping its word and keeping its obligation, as confirmed by the defendants' own credit file, Exhibit F-21 in evidence.

THE COURT: Mr. Piel? Mr. Stitt's point is that they were only doing what they were obligated to do under their agreement.

MR. PIEL: Our contention is that these lines of credit are not binding, they are terminable by the banks.

THE COURT: This Exhibit F-21 --

MR. PIEL: They arrange a line of credit going out to a certain time, under an agreement which typically has termination provisions, depending on the continued satisfaction --

THE COURT: I sustain the objection. I am interested solely in the placing by Brown Brothers of Penn

Central in limbo as far as the purchase of commercial paper is concerned.

MR. PIEL: Your Honor, I will desist from this line of questioning, except to call your Honor's attention to the fact that on the second page of Exhibit F-21 is the bank checking with the First National Bank of Chicago, Illinois, which refers to their line. We have the agreement of Chicago, Illinois, which was one of the lenders, and it shows, typically, and we will bring this into evidence later on, this language:

"This agreement may be terminated at any time by either of us by written notice to the other, but such termination shall not affect our liabilities to you theretofore incurred hereunder."

That is typically --

MR. STITT: I object to the testimony by counsel.

MR. PIEL: I am not testifying. I am merely saying what we contend --

THE COURT: I rule, if you want to put something in on your case, that is your problem.

BY MR. PIEL:

Q Mr. Stitt read to you from the February 5 blue sheet, Exhibit Number F-2 --

MR. STITT: Your Honor, I wonder if we might place a copy of that exhibit before the witness.

MR. PIEL: Fine.

Q Mr. Stitt read to you from F-2, which was a blue sheet of February 5, 1970, by Mr. Wilson. He read to you this excerpt --

THE COURT: Where, Page 1, 2? What paragraph?

Q Page 1, the first paragraph, eight or nine lines down. This refers to a conversation with Mr. John O'Herron of Penn Central Transportation:

"I asked what their cash picture looked like for the first six months of this year. He said it was very tight."

Inviting your comment as to what difference that would have made to you if you had known it, you said it would have meant to you that they were headed for a cash crisis. Do you recall that testimony?

A. Yes, I recall that.

Q Didn't you already know from the newspapers that you had read that their cash situation was very tight?

A. In a general way, yes, this was evident to me.

Q You knew that all railroads were typically cash tight, did you not?

MR. STITT: I object to that question, the form.

THE COURT: Overruled.

A. No, that was not my knowledge.

Q. Did you know, and just tell me whether or not I am attributing this properly to your knowledge, that the first quarter of any year is typically a very bad quarter for a railroad and that railroads that make money over the year often lose money in the first quarter? Is that a fact that you know of?

A. I believe this would be true certainly of the regional lines where they have bad weather factors, but I can't believe that in the warm-weather areas of the country.

Q. You know where the Penn Central operates, don't you?

A. You are speaking about Penn Central now?

Q. Now I am changing the subject, and with respect to Penn Central, that doesn't operate typically in the warm-weather areas of the country, does it?

A. No, it does not.

Q. Its lines are up around the Great Lakes and out to Chicago and through the mountains between here and there, aren't they?

A. That is correct.

Q. If you had been asked not what your reaction would be if told at the time that Mr. O'Herron said the cash position was very tight, but instead had been told the rest of what he said, and you can follow this with me as I read it to you to put in my question, if you had been told that Mr. O'Herron said "The cash picture is very tight," and continued, "he said they will probably need about 200 million to meet their requirements this year. He then went on to describe how they planned to obtain this money. He is working on a 50 to $75 million Euro-dollar loan at the holding company level, proceeds to be lent downstream. Next they plan to do a hundred million 30-year bond offering in Penn Central, with half of each bond having warrants to buy Penn Central's holding company stock and the other half of each bond with warrants to buy common stock in the Great Southwest Corporation."

Could I just interrupt my reading there to ask you a question about Great Southwest, because I think you mentioned it the other day as one of the subsidiaries that you were familiar with, did you not?

A. I did not testify to that extent. I said Great Southwest was one of the nonrail holdings. I know nothing about Great Southwest.

Q. You don't know about its -- the extent of its real estate holdings?

A. No, I do not.

Q. Continuing: "This 100 million financing will probably take four to five months before it can be offered. In the meantime, they are going to talk with two or three New York banks this afternoon to arrange a $50 million stand-by loan for four or five months until the 100 million financing can be completed. Next John said that through another subsidiary they planned to do 100 million financing later on this year to pay down short-term loans."

If you had been told all of that, would you have been as disturbed by the statement about cash being tight?

A. Yes, I would. We go back to the first part of the reading, Mr. Piel, where there is a reference made to the first six months. That's beyond the maturity of my paper. I have got a 90-day investment. I don't want to wait six months to see them out of their tight cash position.

Q. At February 5, knowing about the tight cash position, I mean on March 16, already knowing about the tight cash position, you bought $1 million of these notes, didn't you?

A. I had no knowledge of the tight cash position as evidenced in this evidence here, as shown in this --

Q. Your only such knowledge was in the newspapers?

A. Yes, on a broad-based basis.

Q. Suppose there were added to that knowledge the knowledge that within two or three days they got the

$50 million loan from a group of banks?

MR. STITT: May we specify "they"? Are we talking about Penn Central Transportation or some other company? Are you talking about the company that issued the paper in this case or some other corporation?

A. That would have been mildly reassuring had I known it.

Q. It would have been reassuring?

A. I would have been mildly reassured.

Q. Mildly reassured.

Suppose that somebody at Goldman, Sachs -- by the way, apropos of Mr. Stitt's interjection, you are familiar with the fact that in a corporate setup like the Penn Central setup, just as Mr. O'Herron referred to downstream financing from the holding company, there is also upstream financing by the use of the assets of subsidiaries to support financing for the benefit of the parent through upstream loans or by purchases by the subsidiary of securities from the parent, are you not?

A. I am aware of that, yes.

Q. Suppose in addition to all of this, somebody at Goldman, Sachs called you up and had said to you before you bought the March 16 note "Now, I want you to know, you read in the paper about this being cash short, here are Mr.

O'Herron's plans for how he is going to deal with it, he has already got the bank loan to take him over, $50 million, it will be used upstream and will be available to cover paper until he can do this long-term financing, I just wanted you to know that on the balance and consideration of all this, we have taken it into account and it is our judgment that the paper that we are offering is safe," would you have felt you could buy the paper?

A. If that had been told to me by Goldman, Sachs, again, it would have been to a modest extent reassuring, that the company was trying to solve its problems.

Q. You never asked Goldman, Sachs to give you the kind of analytical display about any commercial paper that they sold to you which you gave to correspondent banks when you were at New York Trust Company?

MR. STITT: Objection to the form of the question.

THE COURT: Overruled.

A. I had never asked for that specific type of report.

Q. Isn't it a fact that in relying on them, as you told us that you were doing, you assumed while you were relying on them to make appropriate analyses with respect to the issuers of paper that they were offering to you, that they would have to be making from time to time a good many balancing judgments?

A. That is true. I expected that they would do that.

MR. PIEL: Thank you.

THE COURT: Does that complete your cross examination?

MR. PIEL: Yes, your Honor.

THE COURT: Any redirect?

MR. STITT: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. STITT:

Q. Mr. Bock, have you before you your affidavit to the Securities and Exchange Commission of October 29, 1971?

I direct your attention to Page 4 --

THE COURT: What's the number of the exhibit?

MR. PIEL: Does your Honor have a copy of this exhibit?

THE COURT: If you give me the number, then I can tell you.

MR. PIEL: It is an exhibit for identification, not in evidence.

THE COURT: Then I don't have it.

MR. PIEL: May I hand it up?

MR. STITT: It is a defendants' designation. If Mr. Piel will give it to me, I will put it in the record.

MR. PIEL: It is PU for identification.

THE COURT: Do you want to put it in the record?

MR. PIEL: No, your Honor, I do not wish to move its admission.

MR. STITT: I would offer its admission, your Honor, but I believe my adversary would object.

THE COURT: Wait.

MR. PIEL: May I move up here? I can't hear Mr. Stitt.

THE COURT: He is moving its admission.

MR. PIEL: I object to its admission.

THE COURT: That's what he said you were going to do.

Objection sustained.

Q. I draw your attention to the paragraph --

THE COURT: If you are going to stand there, keep your voice up so Mr. Piel can hear you. You can stand there if you want, but raise your voice so Mr. Piel can hear you.

Q. Mr. Bock, I am going to draw your attention to the paragraph beginning at the bottom of Page 3 and continuing over to Page 4 which Mr. Piel read into the record yesterday afternoon on cross examination, but eliminating the last sentence. I am going to ask you that last sentence of that paragraph on Page 4.

MR. PIEL: I object, your Honor, and would like to be heard on the objection.

THE COURT: What do you --

MR. PIEL: Before it is read into the record.

THE COURT: I don't even know what I have to rule on. You are asking him to read the last full paragraph on Page 3 --

MR. STITT: No, sir. I am asking him to read just the last sentence, which was the only portion of that paragraph omitted over my objection by Mr. Piel on cross examination yesterday afternoon.

THE COURT: He read more than the first sentence.

MR. STITT: Yes, sir. He read everything except the last sentence.

THE COURT: I am trying to find out what you want me to do, Mr. Stitt. I now say to you, you are asking the witness to read beginning the last full paragraph on the bottom of Page 3 to where?

MR. STITT: No, sir. I am asking him to read the sentence beginning with the word "However" some eight lines down from the top of Page 4.

THE COURT: What did you refer to Page 3 for?

MR. STITT: Because the paragraph from which

Mr. Piel read began on Page 3.

THE COURT: Therefore you are asking this witness to start at Page 3, aren't you?

MR. STITT: No, sir, your Honor.

THE COURT: Then I don't know what you are talking about. Start over again.

BY MR. STITT:

Q Mr. Bock, I draw your attention to the full paragraph beginning at the bottom of Page 3 of your affidavit, Exhibit PU for identification.

Do you have that paragraph before you?

A. I do.

Q Is this the paragraph from which Mr. Piel read to you about prime rate during your testimony yesterday afternoon?

A. Yes, it is.

Q Did Mr. Piel read the complete paragraph?

A. I believe not.

Q Would you read to us the last portion of that paragraph or the last sentence omitted by Mr. Piel?

MR. PIEL: At this point, your Honor, I interpose an objection --

THE COURT: I have read it and I don't see its relevance to this lawsuit.

MR. STITT: The relevance to this lawsuit, your Honor, is that Mr. Piel is suggesting or trying to suggest that there is an inconsistency in Mr. Bock's testimony about prime quality, and he is trying --

THE COURT: He is merely saying that he never mentioned prime quality to Mr. Bruno. He is not suggesting. He is bluntly telling me and the witness that he doesn't believe the witness ever referred to prime quality with Mr. Bruno, and this last sentence does not bear on that point.

MR. STITT: It bears in an introductory way, because it demonstrates that this paragraph has to do with NCO and prime rate and the fact that in June 1970 an offering of Penn Central was made by Goldman, Sachs to Mr. Bock. On June 1, 1970, as this record will show and as stated at Page 302 of the SEC report, Exhibit 75 --

MR. PIEL: For identification.

MR. STITT: -- NCO reserved its prime rating.

THE COURT: Objection sustained.

Q I am asking you, Mr. Bock --

THE COURT: Objection sustained.

MR. STITT: I am now going into another phase.

Q I am going to ask you, Mr. Bock, to turn to Page 3 of that affidavit, the first continued paragraph, just two paragraphs above from which Mr. Piel started reading yesterday, and ask you if you find on that page in that paragraph a reference to the kind of quality paper that you expected from Goldman, Sachs.

MR. PIEL: Your Honor, I object to that as irrelevant.

THE COURT: Sustained.

Q Mr. Bock, yesterday afternoon you were asked questions about the terms creditworthy and prime quality. I draw your attention to this statement from your affidavit --

MR. PIEL: If your Honor please, I object to reading the affidavit into the record.

THE COURT: Sustained.

a (Q Is there in your mind, Mr. Bock, any difference between the prime or top-quality notes that you expected or that you testified and the creditworthiness of a company?)

MR. PIEL: If your Honor please, I object to that question.

THE COURT: Overruled.

(A. Yes. A company can be creditworthy and have varying degrees of quality of its debt obligations. As a matter of fact, the rating services now have as many, I believe, as three different kinds of quality ratings for commercial paper, ...) a and a company could be creditworthy, it could be a very small organization without national standing or a long history of operations, it may be creditworthy, but it would not be a company which could market its commercial paper.

Q Mr. Bock, you were asked questions by my adversary about the complaint that was dated and filed in this action on March 1, 1971.

Do you have that before you?

A. I have the document.

Q And your affidavit to the SEC about which you were questioned earlier was executed sometime subsequently under date of October 29, 1971?

A. Correct.

Q I am going to ask you, Mr. Bock, was that complaint read by you before it was served?

A. Yes, it was.

Q Was the filing of this action done with the authority of the bank?

A. Yes, it was.

Q Do you find in that complaint any reference to the term prime quality?

A. Yes, I do.

Q Where?

A. There is a reference to it on Page 4, Paragraph

12-B."

Q The portion being that "The aforementioned note was of prime quality in a cause of action concerning representations" -- I won't read the paragraph, but in Paragraph 12-B you find that reference?

A I do.

Q Do you find a reference to prime quality in any other portion of this complaint?

A On Page 6, Paragraph J, it reads that "The Penn Central note was not of prime-quality commercial paper; and" --

Q That would be in a subheading of Paragraph 13 beginning at Page 4, and you have drawn our attention to Subparagraph J at Page 6?

A Correct.

THE COURT: I don't understand what this is all about, Mr. Stitt. This witness says he never defined for Mr. Bruno what he meant by prime quality. And what is the difference between prime-rated and prime quality insofar as the defendant is concerned? What he had in his mind, which he never told anybody, has no impact on the defendant. Unless you are going to show that there is some established custom in the industry that prime quality is of a higher, I don't know what you would call it, quality than prime-rated.

MR. STITT: Your Honor, I believe the testimony has been abundant on this point, I am addressing myself to the --

THE COURT: The testimony has been abundant as to what this witness had in his mind, but I find it has no bearing on the issue because he admits he never told Mr. Bruno what he meant by prime quality, assuming that's what he told Mr. Bruno, and that there should be a difference as far as Mr. Bruno is concerned if he heard that the witness said to him "I not only want prime-rated, but I also want prime quality."

MR. STITT: Mr. Bruno will be testifying and I will be putting some questions to him as to what he understood about the kind of paper Mr. Bock wanted.

THE COURT: That's all right, but we are on this witness now, and I am ruling on objections and a proffer of testimony regarding this witness.

MR. STITT: The point I am addressing myself to here, and the sole point I am addressing myself to, is that prime quality was not something that was brought up after Mr. Bock's affidavit to the SEC --

THE COURT: I don't think that was the purpose of Mr. Piel's question yesterday as to whether this witness had read this complaint or knew of the facts when it was filed. Mr. Piel is shaking his head, he agrees with me. So I think you are wasting your time.

MR. STITT: This was the precise question, the purpose of his questions put to Mr. Bock about his SEC affidavit.

THE COURT: I am sorry, you have given him the complaint, you have been going through the words prime quality, and that had nothing to do with what was in Mr. Piel's mind when he was asking the witness about this complaint yesterday. So I suggest you get off of it. We will move along a little faster.

MR. STITT: Yes, your Honor, I was about to do that very thing.

BY MR. STITT:

Q Mr. Bock, yesterday you were asked on cross examination whether a -- I hope I am quoting my adversary correctly -- that your desire to use dealers as opposed to direct issuers, purchase papers from dealers as opposed to direct issuers, was due partially to the higher yield.

I ask you whether there was another factor.

A. The other factor, and I believe I have given testimony on this, was the --

MR. PIEL: I object to the question on the ground that it has been asked and answered.

THE COURT: I will let him answer again.

A. (Continuing) I would expect as offered financial data and financial statements from the company, which was Goldman, Sachs' offering upon the opening of a relationship --

THE COURT: He testified to that at the beginning yesterday morning.

MR. STITT: Yes, your Honor, and I simply wanted to remind the Court.

THE COURT: You wanted to renew it. We could go all over his direct again, if you want to.

MR. STITT: No, sir, I don't. I am going to ask one final question of the witness concerning the firm of Brown Brothers Harriman.

Q. Have you worked for and/or trained persons who have gone on with that firm, Mr. Bock?

THE COURT: The Court will assume that Brown Brothers Harriman has a very good reputation in whether you call it investment banking or this general area, and I don't think anybody is attacking their standing in this area, Mr. Stitt.

MR. STITT: Then I will not press the question, your Honor, and that completes my redirect.

MR. PIEL: I have one question.

RECROSS EXAMINATION

BY MR. PIEL:

Q. Mr. Bock, you mentioned that today the rating agencies have different gradations of ratings, right?

A. I believe that's so.

Q. Wasn't it also true in 1969 and 1970 that National Credit Office had three gradations of rating?

A. It is possible that they did. I have no knowledge of that.

Q. May I try to refresh your recollection by mentioning three ratings: Prime, desirable, satisfactory.

Does that bring anything back to your mind?

A. Yes. This would be the gradation that I would want to observe.

Q. Do you now recall that those were the words that National Credit Office used in 1969 and 1970 for the three ratings which it gave to paper when it approved paper?

A. I have no knowledge of that. We were not subscribers to Dun & Bradstreet NCO reports. I received my information as to the prime rating from the dealer.

Q. You received your knowledge of the requirement of prime rating from the New York law?

A. From whom?

Q. From the New York statute, the banking law.

A. Yes, that is true.

MR. PIEL: Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Anything else, Mr. Stitt?

MR. STITT: Yes, your Honor. Perhaps now I could take up those housekeeping matters that I referred to yesterday.

First of all, I would like to request that there be received in evidence Goldman, Sachs' printout referred to by my adversary. I don't have the designation, but the documents I intend would indicate the name, date, amount, purchaser and maturity dates of the Penn Central Transportation paper maturing in 1970.

MR. PIEL: Your Honor, we made reference yesterday to the master computer run, and we join with Mr. Stitt in offering it. No objection.

THE COURT: It looks quite formidable. What do I need it for?

MR. PIEL: It is not as bad as it looks.

THE COURT: It looks big.

MR. PIEL: It is big, your Honor, but you wouldn't have to read any part of it that either Mr. Stitt or I do not direct your attention to. It does contain some very significant and helpful information in following the course of sales of inventories and the nature of the purchases and other things that we are both concerned with.

THE COURT: All right. This is Plaintiff's Exhibit --

MR. PIEL: Your Honor, although we maintain there is a cutoff date for relevant evidence, March 16, the purchase date, since the question of Goldman, Sachs' behavior and conduct in respect of its inventory position, your Honor, is permitted past that date, this document goes past that date. It goes down to June 1970.

MR. STITT: I had been under the impression that it would go even further and would go certainly through July 1, 1970.

THE COURT: What's the date?

MR. STITT: The one I have before me shows this information for the period July 31, 1968 through December 31, 1970, and I would ask that we have that broader coverage, Mr. Piel.

MR. PIEL: I have no objection. I agree to that.

THE COURT: All right, Plaintiff's Exhibit 93.

xxx (Plaintiff's Exhibit 93 was received in evidence.)

THE COURT: Mr. Piel, would you please give me the title of Exhibit 93, which I assume is on the top?

MR. PIEL: Yes, your Honor. This is a Goldman, Sachs & Co. computer printout entitled "Commercial Paper Daily Transactions from July 31, 1968 through December 31, 1970," and those are commercial daily paper transactions in the notes of the Penn Central Company.

MR. STITT: And then later Penn Central Transportation, after the reorganization.

MR. PIEL: Yes, which changed its name to Penn Central Transportation Company under reorganization.

THE COURT: What's the next thing?

MR. STITT: I would now like to offer in evidence, your Honor, another document designated by the defendants, and this is the petition in reorganization filed by the Penn Central Transportation Company, United States District Court for the Eastern District of Pennsylvania, bearing dates of June 21 and also June 24, 1970, and it has been designated as a Defendants' Exhibit B-33, and I would ask that it be received.

MR. PIEL: I object to its being received, your Honor.

THE COURT: What is its relevance in this case?

MR. STITT: Your Honor, I direct your attention to the statement at the Paragraph 3 or that reorganization petition which draws attention to the bind, if I may use that term, that the railroad was in by being confronted with these commercial paper maturities, specifying dates and amounts, which I am sure we will find correlate with the printouts that have just gone into evidence, and I say that this is precisely what the ICC indicated could very well happen when it referred to the use of commercial paper for long-term as opposed to short-term purposes and referred to the economic squeeze in those two paragraphs in the ICC report dated November 6, 1969, Exhibit F-48 in this case.

MR. PIEL: If your Honor please, the document --

THE COURT: These dates are after the maturity of the paper in evidence. Objection sustained.

MR. PIEL: No, it is before the maturity.

THE COURT: It is after the maturity.

MR. STITT: No, sir.

THE COURT: You bought on March 16.

MR. PIEL: That was the purchase date.

MR. STITT: Franklin's note, your Honor, was to mature on June 26, 1970 --

THE COURT: Objection sustained.

MR. STITT: -- where we had $700,000 --

THE COURT: Objection sustained.

MR. STITT: Your Honor, may I reserve the right to question other witnesses about this document?

THE COURT: I don't see the relevance right now, but if you persuade me at the time you start to examine them -- do you want to have that marked for identification for the record?

MR. STITT: Yes, it is designated Exhibit B-33 --

THE COURT: Wait a minute. Mark it F-94 for identification.

xxx (Plaintiff's Exhibit F-94 was marked for identification.)

MR. STITT: If your Honor please, the next group of documents that I would like to offer are memoranda represented to me as having been prepared in the usual course of Goldman, Sachs' business referred to as the top ten lists of the top ten maturity -- top ten inventory papers. This is marked Exhibit CA, but I believe that the copy that I have is incomplete and I would offer the complete document. These lists will be the subject of testimony and I believe already are the subject of testimony in the record.

MR. PIEL: We have no objection to furnishing this document to Mr. Stitt up to March 16.

MR. STITT: Your Honor, in the interests of accommodation, I will accept that limitation.

MR. PIEL: We have no objection to Mr. Stitt's offer of the document.

xxx (Plaintiff's Exhibit F-95 was received in evidence.)

THE COURT: What is this supposed to be?

MR. PIEL: We will have testimony about it, your Honor, if this case survives a motion to dismiss. I will tell your Honor what we concede that it is.

The salesmen who were in touch with investors were advised each day of what was called the top ten, that is those issuers in which Goldman, Sachs had the largest inventory positions on that day, in order to call their attention to the fact that these were available for delivery, and if they met an issuer's requirements in terms of amount and the maturity date, it would be preferable to reduce inventory rather than, while these things remained in inventory, make a special order and get another note from the issuer's agent.

MR. STITT: The testimony, as I understand it, your Honor, is that each afternoon the Goldman, Sachs commercial salesmen from all over the country have a conference telephone call, during which, among other things, the top ten list is mentioned, and the salesmen are encouraged, I believe is the term, to show these names in --

THE COURT: What's wrong with that?

MR. STITT: It simply is a part of --

THE COURT: That doesn't mean it is not good, does it? A fellow who sells shoes, he is going to put his black shoes out if he is overinventoried in black shoes.

MR. STITT: It just shows that Goldman, Sachs' partners were well aware during this crucial period that its salesmen were aware of the inventory position of Penn Central and would be showing them to prospective purchasers.

THE COURT: I would assume that would be true, but what's wrong with it?

MR. PIEL: Moreover, your Honor, I will ask Mr. Stitt to concede that the note that was sold to Franklin Savings Bank on March 16, 1970 was not sold out of inventory. In order to meet Mr. Bock's requirements in regard to the amount, they had to go and get a special order for him.

MR. STITT: I can't make that representation, your Honor.

THE COURT: What else do you want to put in?

MR. STITT: Your Honor, there were two exhibits emanating from Penn Central, Exhibit 63 and also 79, your Honor, and I wasn't able at that time to represent whether the documents had been identified by Mr. Lepley of Penn Central during his testimony before trial.

I can now make the representation that Exhibit 63 was authenticated by Mr. Lepley at Pages 13 to 15 and that Exhibit 79 was authenticated at Page 68.

THE COURT: Wait a second. I gather that 63 was admitted. Wasn't that BU?

MR. PIEL: No, your Honor, this is 79 he is speaking of.

MR. STITT: I am referring to those two documents, your Honor.

THE COURT: Do one at a time.

MR. STITT: 63 I represent was authenticated by Mr. Lepley --

THE COURT: That was Exhibit BU?

MR. PIEL: It is the same as Exhibit BU.

THE COURT: 63 is not in because nobody can read it. I can't.

MR. STITT: Your Honor, I may be confused. If the defendant has I believe a typewritten copy, I would offer that.

MR. PIEL: We don't.

THE COURT: 63 still --

MR. PIEL: Your Honor, we have no objection to the exhibit. Your Honor excluded it because it was illegible, which seems like a good reason.

THE COURT: That's exactly what I just said, Mr. Piel. I still can't read it.

MR. STITT: May I then have leave to submit a legible typewritten copy?

MR. PIEL: How are you going to get it? I couldn't read this to type it.

MR. STITT: I believe there is a typewritten copy.

THE COURT: Let's see what he comes up with. I will not foreclose him from doing that.

MR. STITT: Thank you, your Honor.

THE COURT: Now let's go to the next one you have.

MR. STITT: Next is Exhibit 79, your Honor.

THE COURT: That was to be held for testimony.

MR. STITT: I now represent that Mr. Lepley authenticated this document on Page 68 of his testimony before trial.

THE COURT: Mr. Piel?

MR. PIEL: Your Honor, Mr. Lepley has been subpoenaed to testify here on Friday, and the deposition testimony in question wasn't designated by Mr. Stitt.

THE COURT: I will hold it until Mr. Lepley -- my notes say "Hold for Lepley" anyhow, made on Monday.

MR. STITT: Your Honor, I would also reserve the right to authenticate documents not yet received but which we have designated with the defendants' witnesses or to use on cross.

THE COURT: I gather the ones that were held open were held open specifically, and I can give you the numbers, for testimony. Asay was supposed to do some of them, wasn't he?

MR. STITT: He did a good number, your Honor, but not all. There were also objections raised to certain Goldman, Sachs exhibits, and I would simply reserve the right to use those and try to authenticate them, persuade your Honor that they are indeed relevant during my cross examination of those witnesses. I just don't want to be foreclosed from doing that by resting at this time.

THE COURT: You wouldn't be foreclosed from doing that.

MR. STITT: Your Honor, next and I believe the last item, has to do with the Goldman, Sachs salesman Robert Kaufman. It was represented in the pretrial order, in fact I believe both of them, Page 133 Paragraph 3, that the defendants intended to call him.

Yesterday afternoon Mr. Piel at the close of the session, after telling Mr. Van Cleave and Mr. Doty to be their first witnesses, indicated he now had some doubt --

THE COURT: Is that Mr. Kaufman standing to your right?

MR. PIEL: This is Mr. Robert Kaufman, your Honor.

THE COURT: What is your point?

MR. STITT: My point is that I haven't had an opportunity to review his examination before trial in this action or his SEC testimony. I do ask leave to review that in order to determine whether I can get along with the deposition testimony that's in evidence or whether I do wish to call him as part of my case, and I would ask leave until Friday to make that review and so inform my adversary in court.

MR. PIEL: Your Honor, I very strongly oppose that. Mr. Stitt has designated portions of Mr. Kaufman's deposition on his case. It has already been submitted to your Honor. I told Mr. Stitt that Mr. Kaufman would be available to him if he wanted live testimony and that we intended to call him.

Mr. Stitt said, "That's fine. If you are going to call him, I wouldn't call him."

I told him yesterday that my purpose of calling him would be to have -- if there was an issue between him and Mr. Bock about their conversations, and as it has turned out, so far as Mr. Kaufman is concerned, he has nothing different to say about their conversations that took place when paper was ordered, maturity, amount, and so on. So I have no reason to put him on the stand. But Mr. Kaufman is here and happy to go on the stand for any purpose if Mr. Stitt would like to put him on.

I think Mr. Stitt has got to rest so that I can address a motion to his case, which I think has failed.

MR. STITT: If your Honor please, the paragraph of the pretrial order I am referring to says the defendants' counsel, Paragraph 3, Page 133, and this is the revised version so the page may be in error, but I think the language is the same now --

THE COURT: Wait a second until I get the page.

MR. STITT: Paragraph 3 --

THE COURT: I am only up to 130.

MR. PIEL: Page 133, Paragraph 3 at the top, is what Mr. Stitt is referring to.

THE COURT: All right.

MR. STITT: "The defendants' counsel have represented that they will call Robert H. Kaufman as a witness at the trial. Accordingly, the plaintiff has withdrawn its initial designation of Mr. Kaufman as a live witness to be called by the plaintiff."

Up until --

THE COURT: He says you only told him yesterday --

MR. STITT: Up until 5:00 o'clock yesterday afternoon that was my understanding and that was the way I prepared my case, and as I tried to explain to my adversary, I couldn't prepare for Mr. Doty and Mr. Van Cleave and get Mr. Kaufman's testimony and do this all overnight.

Therefore, I would ask for a short period of time to review his SEC --

THE COURT: I am going to have to grant that, Mr. Piel.

MR. PIEL: If your Honor please?

THE COURT: The representation in the pretrial order is that you were going to call him. "Accordingly, the plaintiff has withdrawn its designation of Mr. Kaufman."

MR. PIEL: As a live witness. I informed Mr. Stitt yesterday that I saw no reason to put Mr. Kaufman on the stand.

THE COURT: That was at 5:00 o'clock and you also told him that you had two other witnesses that he had to be prepared to cross examine today. You couldn't expect him to be prepared in that time to be ready with Mr. Kaufman today, do you?

MR. PIEL: Your Honor, I think if your Honor is inclined to grant Mr. Stitt time to do that, which I personally don't think he needs, but he thinks so and your Honor would grant it, then I would request that it be at an early date and not at the end of the case so we know at some point he has rested and I can make a motion to dismiss.

THE COURT: Friday isn't the end of the case. We are only at Wednesday, and I assume from what you told me, your case is going to take seven days.

MR. PIEL: Yes, your Honor.

THE COURT: Friday is not the end of the case, is it?

MR. PIEL: May we give Mr. Kaufman an appointment to be available --

THE COURT: 10:00 o'clock Friday morning.

MR. PIEL: And interrupt whatever witness is on the stand to let Mr. Kaufman testify, if Mr. Stitt wants his testimony?

THE COURT: That's right. 10:00 o'clock Friday morning.

MR. PIEL: Thank you, your Honor.

THE COURT: See you then, Mr. Kaufman.

You rest except for this?

MR. STITT: Your Honor, I also would like to offer an NCO document and also --

MR. PIEL: Number, please, so we can look it up.

MR. STITT: The document passes on the fourth-quarter earnings reports -- I mean the first-quarter 1970 earnings reports.

MR. PIEL: May we have the exhibit number so we can be finding it while you talk about it?

MR. STITT: There are two documents, your Honor. The first would be an NCO document, a release, referring to the first-quarter earnings of 1970.

THE COURT: Wait. Find what you want to offer and turn to Mr. Piel and show it to him so he can find it and then make your application.

MR. STITT: Your Honor, offer is made, first of all, of Exhibit EF. It is an NCO release under date of April 22, 1970, reporting the actual earnings or, rather, losses of Penn Central in the Transportation Company for the first quarter of 1970.

I ask that this be received because it represents a continuation of the loss trend and projections set forth in Exhibits F-76, 77 and 78, the Penn Central projections of Mr. Underhill which were authenticated by Mr. Asay and which have been received. Because of that tie-in, I would ask that this Exhibit EF be received as well.

MR. PIEL: If your Honor please, this is a document dated April 22, 1970, more than a month after the transaction. It cannot constitute knowledge or notice to anyone at the time of anything relevant to the transaction.

THE COURT: Objection sustained.

MR. PIEL: EH is a newspaper clipping of April 23, 1970, again more than a month after the transaction.

MR. STITT: And which I was also offering, your Honor, to show the continuation, to show that these projections noted by Mr. Underhill beginning on February 9, later in February, and on March 6, came into being.

THE COURT: That isn't the point. It is your witness' testimony that if he had known of the projections he wouldn't have bought, not if he knew the true fact, after the event.

MR. STITT: Yes, sir, it is in that sense cumulative.

MR. PIEL: Those are also received subject to connection and any proof that Goldman, Sachs could have discovered them.

THE COURT: That's something else.

MR. PIEL: I just call your attention to the fact that we have come to the end of that topic. I don't think Mr. Kaufman will be able to add anything to that, and the connection has not appeared.

THE COURT: Plaintiff rests?

MR. STITT: Plaintiff rests.

THE COURT: We will have a short recess.

MR. PIEL: If your Honor please, I understand that Mr. Stitt has rested, subject to deciding whether or not to call Mr. Kaufman, so that we are not in a position to know right now what the content of his entire case is.

But I take it that I can wait until we find that out or add something to the record before presenting to your Honor certain motions which we wish to make at the conclusion of the plaintiff's case, including motions to strike.

THE COURT: You can do it either way you wish, Mr. Piel.

MR. PIEL: I think it would be well to have the complete record, unless Mr. Stitt would be willing to concede that Mr. Kaufman's testimony wouldn't add anything to the grounds on which I move.

THE COURT: I don't think he is willing to concede that. If he was, he wouldn't want to put him on. You can talk about it in the hallway outside during the recess.

MR. STITT: I believe your Honor's reading of my thoughts is correct.

MR. PIEL: Then I will reserve my motions until Friday, your Honor.

THE COURT: Fine. Be prepared to proceed in the next fifteen or twenty minutes with the defense case.

(Recess.)

MR. PIEL: If your Honor please, the defendant calls Mr. George Van Cleave.

GEORGE MOTEN VAN CLEAVE,

called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PIEL:

Q. Mr. Van Cleave, are you a general partner of Goldman, Sachs & Company?

A. Yes, I am.

Q. You have been a general partner since December 31, 1970?

A. Yes, that is correct.

Q. Prior to that time, were you employed by the partnership?

A. Yes, I was.

Q. When for the first time?

A. August 1, 1958.

Q. In what capacity?

A. As an assistant cashier in our Chicago office.

Q. Very briefly, what had been your education and employment prior to joining Goldman, Sachs in 1958?

A. After high school I attended George Williams College in Chicago for one year. I left school, went to work on LaSalle Street, which is the equivalent of Wall Street in Chicago, for approximately a year. Then I went into the Navy for four years, returned from the Navy, went back to the brokerage business and attended Northwestern University in the evenings for approximately two years.

Q. This brought you up to joining Goldman, Sachs in the Chicago office?

A. Yes.

Q. What were your successive employments or positions in Goldman, Sachs?

A. In 1960 I left the cashiering department and entered the Commercial Paper Department as a buyer of paper.

Q. Will you explain what the function of the buyer is in the Commercial Paper Department?

A. A buyer of paper is the person or persons within Goldman, Sachs & Company that deal with the issuing companies.

They keep tabs on just exactly what the companies need in the way of dollars and what their maturities are, and it is a daily client contact business.

Q. After you served as a buyer in the Commercial Paper Department, did you do something else?

A. I was promoted to a vice president of the Commercial Paper Department in February of 1968, and then in August of 1968 I was transferred to the New York office to head up the day-to-day responsibilities of the marketing of commercial paper and as the Number 2 man in the department.

THE COURT: You say in February 1968 you became vice president in the Commercial Paper Department?

THE WITNESS: Yes, sir.

THE COURT: Was this here in New York?

THE WITNESS: That was in Chicago.

THE COURT: When did you come to New York?

THE WITNESS: August 1, 1968.

THE COURT: What did you become when you arrived in New York in August 1968?

THE WITNESS: My title remained the same, but I was put in charge of the day-to-day or marketing aspects of our commercial paper business.

Q. Goldman, Sachs & Company was and continues to be a partnership, is that right?

A. That is correct.

Q. But some of the employees who are not partners are given the title vice president?

A. That is correct. That was approved by the Stock Exchange approximately ten years ago.

Q. It is a title of dignity and authority?

A. Yes.

Q. Among the employees?

A. Yes. To set you apart from the other employees.

Q. You said you were in charge of the marketing operations.

Were you in day-to-day charge of the operations -- does that embrace both the function performed by the buyers and maintaining liaison with the issuers and also the function performed by the salesmen and the sales managers --

A. That's correct.

Q. -- in presenting the paper to investors?

A. That's correct.

Q. Did your position and functions in these regards familiarize you with all phases of the work of the Commercial Paper Department at Goldman, Sachs?

A. Yes, pretty much so.

MR. PIEL: Now I would like to offer Exhibit BN to which there is no objection under the pretrial order.

MR. STITT: Your Honor, this seems to be almost a Chinese copy of what I believe we have designated as Exhibit 60. No objection.

THE COURT: All right.

xxx (Defendants' Exhibit BN was received in evidence.)

Q This relates to the overall organization of Goldman, Sachs & Co. for the period January 1, 1970 to June 30, 1970; is that correct?

A. Yes, that is correct.

Q Just for general background here, I don't want a lot of detail, I want you to explain to the Court briefly what these various departments do in order to show the Court different kinds of activities that Goldman, Sachs engages in with respect to services that may be offered to issuers of securities and investors in securities.

A. Yes. We are known as a general underwriter of securities, and these various departments play a part in that function.

The Syndicate Department is the one that puts the underwritings together, bringing in other dealers.

The Corporate Finance Department has various parts to it. New business is the man that -- the new businessman is the one that sells the services of Goldman, Sachs. He contacts the clients and tries to solicit their business for either a stock issue or bond issue, mergers, commercial paper, private placement, lease financings, all of the various services at Goldman, Sachs.

The Buying Department in this particular case does not relate to my position as a buyer of paper, but this particular department is the one that puts the prospectus together and loan agreements, and things such as that.

Private placements I think are self-explanatory, mergers and acquisitions, lease financing.

Block trading, as Goldman, Sachs is largely an institutional house in most all their business, we deal in very large block trades on and off the Exchange. That whole area is the trading area, and we are also involved in arbitrage and puts and calls.

You will also see after corporate finance, leasing corporate finance, commercial paper, Municipal Bond Department, trading and arbitrage that I mentioned, international, sales research, investment management, and then also the administrative and operations area.

Q We will come back in a minute to the Commercial Paper Department.

Was Goldman, Sachs also a member of stock exchanges?

A. Yes, they are. New York Stock Exchange, the Midwest Stock Exchange and the American Stock Exchange.

Q. To identify some of the terms and references which will occur, which the Court will be reading in the rather voluminous documentary evidence here about this business, I have a number of questions I would like to ask you.

First of all, I would like you to explain, since there is reference to it in some of the documents, the relationship of the Corporate Finance Department on this chart to the Commercial Paper Department insofar as their respective areas of activity are concerned.

A. As I mentioned, the corporate finance man sells all the services of Goldman, Sachs & Company. One of those services would be commercial paper. He would be our salesman, if you will, to solicit borrowing corporations to use the commercial paper market.

Q. Does he have anything to do with deciding whether or not Goldman, Sachs will handle the commercial paper issue?

Q. No, he will not. We set forth guidelines at the beginning and then make a final decision after the account is brought in.

Q. Where is that decision made?

A. Through Robert Wilson and the Credit Department.

To clean that up for you, it is after a recommendation from the Credit Department. It is Wilson's final decision.

Q Will you explain the role of the Research Department that appears on here? Is that the Investment Research Department that is commonly called the Research Department?

A. That's correct. That deals strictly with equity securities, and our following of certain stocks, with recommendations to buy, sell or hold.

Q Does it publish Goldman, Sachs' recommendations with regard to equity investments?

A. Yes, it does.

Q Is there a group in this organization that is in overall charge of Goldman, Sachs' business?

A. Yes.

Q Is that reflected on this chart?

A. Yes. At the very top of the chart there is the management committee, which is our equivalent to a board of directors.

Q It has a chairman, Mr. Levy?

A. Correct.

Q The other gentlemen, their other duties besides being on the management committee, are indicated elsewhere on the chart, is that right, their other functions?

A. That's correct.

Q. What are the functions of the management committee?

A. The management committee determines the general direction and policies of the firm.

Q. Is there a particular mode of communication or reporting between the departments and the management committee?

A. Yes. Each department, if not headed by one of the members of the management committee, which some are, has a liaison man that acts between the management committee and that department.

Q. What is the liaison's responsibility?

A. The liaison responsibility is to discuss general policy, talk about things such as salaries and budgets and any departure from the normal course of business.

Q. Who was the liaison man for the Commercial Paper Department?

A. John Weinberg.

Q. Did Mr. Weinberg have any role in the actual operations of the Commercial Paper Department?

A. No.

Q. Did the Commercial Paper Department report to Mr. Weinberg regarding taking on an issuer or declining an issuer of commercial paper?

A. No.

Q. You have told us that decision would be made by Mr. Wilson with the aid and advice of the Credit Department.

A. That's correct.

Q. The Credit Department does not appear on this Exhibit BN, and that is because it is a part of the Commercial Paper Department; is that right?

A. That is correct.

Q. Did the management committee in the period 1969 to the early part of 1970 with which we are concerned here, in that period did the management committee intervene in any way in decisions by the Commercial Paper Department as to whether an issuer was creditworthy for purposes of Goldman, Sachs handling its commercial paper?

MR. STITT: May I hear that question again?

(Record read.)

Q. May I amend my question?

He called my attention to something that interested him. I really wanted to ask that question embracing the entire time with which you dealt with Penn Central or its predecessor corporations which goes back to prior to August 1968. I amend the time period that I am asking you about.

MR. STITT: You are including this witness' knowledge from August 1968 on, I take it.

MR. PIEL: That's right.

A. The answer is no.

Q. With regard to commercial paper generally, I would like to present some information to the Court about the nature of this investment instrument, its financing tool and the nature of the market in which it is offered.

How much in the period '69 to '70, what was the volume of money that was being raised annually by American enterprises in the commercial paper market in the United States?

MR. STITT: Your Honor, I would question the relevance.

THE COURT: I am being educated in what a piece of commercial paper is and what its significance is. Go ahead.

A. The total market in outstanding was approximately $40 billion.

Q. Outstanding at any one time?

A. Yes.

Q. So the amount offered would be many times that?

A. The volume would be many times that.

Q. We have heard reference to a difference between dealer paper, so-called, and direct paper, so-called.

There is a difference, is there?

A. Yes.

Q. How is that outstanding volume divided between those, roughly?

A. 25 billion in the direct market and 15 billion in the dealer market.

THE COURT: More than half is direct paper?

THE WITNESS: Yes.

Q. If a man walked into Goldman, Sachs & Company's office on Broad Street -- is that where it is?

A. Yes.

Q. -- and said, "I have $500 or $1,000 in my savings bank and I see in the newspaper that the rates are higher in commercial paper than they are on savings accounts, I would like to buy a commercial paper note," would Goldman, Sachs sell it to him?

A. No, we would not. The commercial paper market is a sophisticated investor's market. The average sale is over a million dollars.

MR. STITT: I object to the use of the term "sophisticated," your Honor, and I move to strike.

THE COURT: I will take it. Your own witness acknowledged he was a professional investor.

MR. STITT: That is true.

Q. Mr. Van Cleave, is there some minimum amount that Goldman, Sachs as a matter of practice -- and let's go back to the period, again -- all my questions, unless I otherwise indicate, should be focused, in case there is any difference, on '69 and '70.

All right?

A. All right. Understood.

Q. Was there any minimum amount that Goldman, Sachs as a matter of practice insisted should be involved in a purchase by an investor for Goldman, Sachs to be willing to deal in it?

A. Yes. The very minimum would be $100,000, and we really didn't do much of that because it really costs us money to write that kind of a ticket.

Q. Exhibit F-93, the master computer run that was put in evidence here this morning, shows the names of all purchasers of Penn Central Transportation notes.

But I want to ask you in general, not with reference to Penn Central, but in general with regard to this market, will you give us a general description of the character of the investors that invest in commercial paper to whom Goldman, Sachs sells?

A. Yes. They are names you would all recognize. They are major banking institutions, mutual funds, pension funds, other corporations that are in excess cash, and quite a bit of paper is purchased by commercial banks for customers, and it is the policy of the banks, and rightfully so, that they do not identify the name of their customer, so many trades are made with the banks that are delivered in the bank's name, and they, I would have to think, reach the same type of investors that are buying not through the banks but directly from us.

Q I missed the last point.

A. I said I would have to assume that they are the same type of investors whom we sell directly but merely would prefer to go through their bank.

Q When a bank purchases or gives you an order, do those orders come over the telephone?

A. Correct.

Q When you get that order from a commercial bank, do you know whether it is buying for its own account or for the account of a client of that bank?

A. No. But 99 percent of those transactions are done for the -- for a customer.

Q They are probably for a customer?

A. Yes, correct.

THE COURT: You are speaking about commercial banks now?

MR. PIEL: Yes, your Honor.

THE COURT: The plaintiff here is a savings bank?

MR. PIEL: That's correct. I am just identifying the general character of the market.

I offer, to complete that phase of it, Exhibit CT, which is a tabulation of short-term money statistics for the period January 1, 1965 through March 1970, showing the month-end outstanding by quarters of commercial paper and other short-term money instruments in the short-term money market.

The pretrial order states that Mr. Stitt reserves only the possibility of an objection to relevance, and I am offering it as a part of this background picture of the growth of the commercial paper market and Goldman, Sachs' share of that market.

MR. STITT: My adversary is correct. That would be my sole objection, your Honor. No objection as to authenticity.

THE COURT: Overruled.

xxx (Defendants' Exhibit CT was received in evidence.)

Q Briefly, because we have already had some testimony on it, how do rates on direct issuer finance paper compare with those on paper sold through dealers, in general?

A. In general, the direct issuer rates are less.

Q. Can you give us a general idea, or is the question not capable of being answered that way, as to the size of the difference?

A. No, I think I can explain that.

It wasn't really until the midsixties that the dealer market started to gain the proportions that it has because most of the major large corporations, nonfinanced, prefer to deal with their banks and really didn't know much about the commercial paper market. But for years and years, the financiers of say Sears, Ford, General Motors, in financing the receivables of the sale of automobiles and goods and the finance charges that when people use their charge accounts, they had been in the market quite awhile and all were in for billions of dollars, each one of the companies. Therefore, they had a very good head start and they were well-known companies, and they were able to raise dollars a lot cheaper than the dealer market.

Q. With regard to the industrial and commercial issuers as distinguished from the finance company issuers, can you give us an idea of how much commercial paper such companies keep outstanding on a more or less constant basis? Referring to an individual company.

Q. An individual company?

Q. Again, just a generality about it.

A. Anywhere from, say, 10 million to 4 or 5 hundred million.

Q. How many issuers sold commercial paper through Goldman, Sachs in the period 1968-1970?

A. We ranged between 200 and 225.

Q. How is it determined what amount of commercial paper will be purchased by Goldman, Sachs from an issuer on a given day?

A. There are a number of factors in that. It depends, A, how much paper is available for sale that day, and if it happened to be a fairly large amount, why, then, we would consider what was in our inventory position, what was outstanding, and just to get an overall feel as to how much paper should be marketed.

Q. When you say how much is available that day, what makes it available? Is that the issuer's desire to raise money that day?

A. That's correct. That could be a combination of paper that's maturing that he would like to just renew, it could be a need for additional dollars to pay his taxes or dividends or something else, but it was a requirement of the funds requested by the issuer.

Q. How is the maturity set on the notes which will be taken over and marketed?

A. We would discuss that with the issuer. If it was a seasonal borrower and he would be out of the market in thirty or sixty days, why, we try to sell it out to that period of time where he would then be able to pay it off.

For someone who was in the market pretty much everyday, why, the maturity wouldn't be that important. But we would then discuss a general maturity range, but we encouraged the issuers during this period of time to take what the market would offer, and, therefore, we would go out and sell maturities hopefully from anywhere from five days to six months. We tried to offer that range of maturity to all investors.

Q. In other words, you tried to encourage the issuers to solve their financing problems by meeting the desires of investors with regard to how long the investor wanted to have his money out?

A. That's correct.

Q. How is the discount rate determined at which Goldman, Sachs will acquire the commercial paper notes from this issuer?

A. We look, and particularly me, because that is my responsibility, at all the money market instruments.

For example, Treasury bills, banker's acceptances, Federal funds, certificates of deposit, any short-term money market interest rate and the general condition of the money market, and also the direct issuers.

Obviously as a biggest part of the market, that was a factor. By that we determine at what rate we felt that the paper could be sold.

Q. Is this a matter of setting the rate for the commercial paper so that it will fit into the money market?

A. That's correct.

Q. Is there a relation between the buying rate and the selling rate of discount at which you will turn around and offer the notes to the investors?

A. That is correct, there is. We usually add 1/8 of 1 percent spread, as we call it, for our income on most of our issuers, but on some very small issuers that were not in the market very much and for small amounts, why, we would add a quarter of 1 percent because the notes were that much more difficult to sell.

Q. These notes are bought by you from the issuer on a discount basis rather than on an interest-to-follow basis; is that right?

A. For the most part, yes. 95 percent.

Q. Then you turn around and sell to the investor again on a discount basis?

A. Right.

Q. But in this case the discount is 1/8 smaller than the discount that you got, so that difference is your spread, is that right?

A. That's correct.

If I may just say, we buy it at a higher rate than we sell it because it is discounted.

THE COURT: Does that mean that you buy $100 million worth at, say, 8, 8 percent discount, but you sell it to the public at 7-7/8 percent?

THE WITNESS: Yes, your Honor.

THE COURT: 1/8 is yours?

THE WITNESS: Correct.

THE COURT: Does it make any difference as to how many days have gone by since the paper was bought?

THE WITNESS: Yes, your Honor. I should have said 1/8 per annum. If it is a thirty-day note, it is 1/8 for thirty days.

Q. A thirty-day note would be 1/12 of 1/8, so far as your spread is concerned then?

A. Yes.

Q. Conversely, just to complete the picture, the investor who, let's say, for an easy number, buys at a

10 percent discount annualized, and to make it simple, let's talk about a year instead of a fraction, he pays -- he would be paying $900,000 for the $1 million note; is that correct?

A. That's correct.

Q. At the end of the year, he would get the $1 million. So, actually he has invested $900,000 on which he earns by holding the note $10 million, and that's 11.11 percent on a yield basis?

A. That's right. The effective yield is higher on discount paper.

Q. That's important when it comes to the investor comparing the yield on commercial paper with the yield available [illegible] him on Treasury bills and certificates of deposit?

A. Treasury bills are also discounted. Certificates of deposit are not. They are sold on an interest-bearing basis.

Q. On an interest-to-follow basis?

A. Yes.

Q. When he is going into the market to see where he gets the best deal, he converts everything to a yield basis to make the comparison, is that right?

A. Yes.

Q What are the principal factors that go into the determination of rate when you are determining that, the rate that you are going to propose to the issuer?

A. Well, as I mentioned before --

Q As among the factors that you look at.

A. As I said, I look at the money market instruments that I mentioned, the CD's, the bills, et cetera, and also the amount of paper that is available for the day, that is a factor, also our current position, that's a factor, and just the overall climate of the money market at that time.

Q Does the yield rate for commercial paper fit in somewhere between Treasury bills?

A. Yes. It has to obviously yield more than Treasury bills --

Q But it yields less than -- what does it yield less than what the investor might invest in?

A. Actually, the commercial paper yielded more than any other quality type instrument.

Q To go to the other side of the equation, when it comes to the issuer's cost for raising money, how does commercial paper compare in cost to the issuer resorting to bank borrowing?

A. Over the years, it has averaged anywhere from one-half to three-quarters of one percent less. The key to our pricing is you must price it so that the borrower or issuer pays less than what it costs him to borrow from the banks, yet in order to sell it you must price it at a higher yield than Treasury bills, certificates of deposits, banker's acceptances.

THE COURT: So that the commercial paper would pay a lower rate than a bank loan?

MR. PIEL: Costs, your Honor. It costs a lower rate to the borrower.

THE WITNESS: Yes.

MR. PIEL: Maybe I can help you in a minute with a document that I am going to offer that will picture this.

First of all, I offer Defendants' Exhibit for identification CL, which the pretrial order advises us is not objected to. This is a spread display of money market rates for the period of January 4, 1969 through April 4, 1970, showing over that period the relationship between the rates of yields for the various short-term money market instruments as of Saturday of each week as published by the Federal Reserve Bulletin.

THE COURT: Any objection, Mr. Stitt?

MR. STITT: No, sir, your Honor.

xxx (Defendants' Exhibit CL was received in evidence.)

THE COURT: What do you mean by Federal funds? There was a reference on some confirmation I saw yesterday called Federal funds.

THE WITNESS: Federal funds are immediate available funds. They are on deposit at the Federal Reserve Bank for the commercial banks.

THE COURT: Why should there have been a Federal funds notation on a purchase by the Franklin Savings Bank?

MR. PIEL: May I develop that with a question or two?

THE COURT: Sure.

BY MR. PIEL:

Q First of all, and I am sure Mr. Stitt will excuse the leading question to develop this fast, clearing house funds are funds --

MR. STITT: Your Honor, I do think we are getting --

Q I am asking you if it is true by way of contrast that clearing house funds are those funds which a depositor has on deposit with his bank, which when he draws a check, draft or order against it, that check will have to clear through the clearing house before the payee of the check will have the proceeds credited to his account?

A. That's correct.

Q. That may take anywhere from a day to a week, depending on where the banks are?

A. That's correct.

Q. By contrast, large institutions that have large amounts of monies on deposit will maintain with banks that are members of the Federal Reserve System funds on deposit to their credit that are called Federal funds, because a draft presented or an order presented against that deposit will be given immediate effect and transfer to the payee's account with the same bank or another member bank; is that correct?

A. That's correct.

Q. In other words, it enables with specific reference to commercial paper, it enables the dealer to deliver the note to the investor's agent bank, member of the Federal Reserve, against immediate transfer to the dealer's account of Federal funds and payment therefor?

A. Correct. If I could take it one step further, it would help the judge.

If one needs Federal funds and one doesn't have them, then they may purchase them, and that is what is in this column, the cost of purchasing those immediately available funds.

THE COURT: Where do you buy these Federal funds?

THE WITNESS: There are several dealers that deal in them and then several banks deal among themselves.

THE COURT: Can I go in and buy Federal funds?

THE WITNESS: You could, yes, sir, if you had use for them, but it is even a larger market than the paper market. You would have to trade in pretty big size to get it accomplished.

THE COURT: I don't have that much.

MR. PIEL: I now offer in evidence Defendants' Exhibit CO for identification.

THE COURT: Any objection?

MR. STITT: No, your Honor. We have discussed a slight change of that as originally designated, and we have no objection.

THE COURT: All right.

xxx (Defendants' Exhibit CO was received in evidence.)

MR. PIEL: Please hand the original exhibit to the Court because the copy I have for the witness is a little incomplete but it is sufficient for my question.

Q Will you tell us what that document is?

A. This is a comparison of three-month industrial commercial paper versus three-month Treasury bills.

Q Is that a document which Goldman, Sachs prepares and uses in the course of its business?

A. Yes, it is.

Q What is it used for?

A. It is to show potential investors the difference in yield in buying commercial paper as opposed to Treasury bills.

Q Now I show you Exhibit CQ for identification.

THE COURT: May I ask a question about CO?

MR. PIEL: Yes, please do.

THE COURT: There doesn't seem to be a definite ratio between the two, Mr. Van Cleave. For example, if you take late 1969-early 1970, the yield seems to be greater than normal, does it not?

THE WITNESS: Yes.

THE COURT: What's the reason for that?

THE WITNESS: During tight money periods there is normally a flight to quality, as we would say, and when money starts to get tight, most investors will say "Well, I just want to buy Uncle Sam because if anything happens to him" -- you know.

You will notice that another tight period of time was 1966, you will notice that the spread widened there, too. Then as money starts to ease, the spreads were narrower.

MR. PIEL: I offer Defendants' Exhibit CQ for identification.

MR. STITT: No objection by the plaintiff, your Honor.

xxx (Defendants' Exhibit CQ was received in evidence.)

Q. Is this a document prepared by Goldman, Sachs and used in its business, in the course of its business?

A. That is correct.

Q. What is it used for?

A. This is used to solicit the other side, to solicit the issuing company, and to point out to him why it is cheaper for him to borrow in the commercial paper market, in most markets, rather than borrow from his banks. On this chart we are assuming that the company pays a 10 percent compensating balance.

Q. What is the reason for that assumption?

A. Because 90 percent of all borrowers pay 10 percent compensating balance. Some have various arrangements that are lower, some higher, but most borrow on this basis.

Q. In other words, if an issuer borrows funds from a bank at the prime rate, let's say it wants to borrow $1 million, and the bank will charge them the prime rate for the use of that money during the period of time they use it;

is that correct?

A. That's correct.

Q. But they also require that they leave $100,000 on deposit in that bank undrawn upon?

A. Right.

Q. So, in effect, the issuer is paying prime rate on $1 million for the use of $900,000?

A. That's correct.

Q. And it is giving effect to that calculation to give a real comparison between their cost of financing with banks and their cost of financing in the commercial paper market, even though the actual prime rate and discount rate might be closer together, without reference to the compensating balance?

A. That is correct.

Q. I am going to ask you a little later to get into the question of bank lines in relation to commercial paper, but I want to ask you just generally now with regard to this exhibit, is it a fact that if issuers have paper outstanding, that many of them also have related bank lines of credit?

A. Yes.

Q. They have to pay for those bank lines of credit?

A. Yes.

Q. Sometimes either by a commitment fee or sometimes by a compensating balance on deposit?

A. Correct.

Q. Has that been taken into account in the structuring of this chart?

A. Yes, it has.

Q. If that weren't taken into account, then this spread would be even bigger?

A. It would be wider.

THE COURT: Do you think we ought to stop for lunch, Mr. Piel?

MR. PIEL: This is a good point, your Honor.

THE COURT: I have an arraignment in a criminal case set for 2:00 o'clock, so why don't you return at 2:15.

(Luncheon recess.)

AFTERNOON SESSION

2:35 P.M.

GEORGE MOTEN VAN CLEAVE, resumed.

THE COURT: You may proceed.

DIRECT EXAMINATION CONTINUED

BY MR. PIEL:

Q. Do all issuers of commercial paper who offer commercial paper in the market place through Goldman, Sachs & Co. plan to pay down their notes at some particular time?

A. Not necessarily. In the example of finance companies who continue to make loans, the loans liquidate and they continue to make more loans, they more or less establish a permanent layer of short-term debt. Certainly the seasonal borrower does plan to pay that off.

Then utility companies and also, I would say, the Penn Central Transportation Company look to eventually funding the short-term debt when the bond market is in good shape, rates are not too high.

Q. In the meantime, those companies like the finance companies roll their notes?

A. Correct.

Q. I would like to have Exhibit BN in evidence shown to the witness.

Incidentally, on the subject of the utility issuers of commercial paper, do a number of public utility companies issue their commercial paper through Goldman, Sachs' services?

A. Yes.

Q. For how long has that gone on?

A. That came about in the midsixties.

Q. Was the qualification of their paper for exemption from registration taken up by Goldman, Sachs with the Securities and Exchange Commission?

A. That is correct.

Q. Were release letters obtained from the SEC regarding the circumstances under which public utility commercial paper was deemed to meet the qualifications for exemption from registration under the 1933 Act?

A. Yes. They described those as no action letters.

Q. You call them release letters?

THE COURT: You are talking about public utilities. You don't include railroads in public utilities, do you?

MR. PIEL: No, I do not. I might just say, your Honor, on that point, that railroads have an additional exemption from registration under a section of the Securities Act which exempts from registration securities which are subject to the jurisdiction of the Interstate Commerce Commission, so that it doesn't come up for a ruling specifically by the SEC in regard to qualifications for exemption.

THE COURT: Go ahead.

Q. Turning to the second page of Exhibit BN in evidence, is that a chart showing the structure and personnel, or the top personnel, in any event, of the Commercial Paper Department during the first six months of 1970?

A. Yes.

Q. I would like you to just run over this chart reasonably quickly now to identify who these people are and what their functions are.

Robert G. Wilson, a partner, was head of the department?

A. Correct.

Q. You have already said he had the ultimate responsibility for decisions, credit decisions, on whether or not to handle an issue of paper.

A. Correct.

Q. Who were the consultants James P. Hemphill, partner, and John H. Rhoades, limited partner?

A. It is James C. Hemphill and he is a partner located in the Chicago office who had long experience in the commercial paper market and, in fact, was the one that trained me. He had been in the business twenty-five to thirty years.

John Rhoades was the former head of the Commercial Paper Department who became a limited partner in the firm because of health reasons. They were used as consultants in the Paper Department.

Q On questions relating to whether or not to handle the paper of a particular issuer?

A. No, there was no -- no. None whatsoever.

Q On policy --

A. Pretty much general policy.

Q We see off to one side Credit Department, Jack Vogel, manager.

What was the function of the Credit Department?

A. The function of the Credit Department was to -- when a new issue would be solicited, to determine whether or not that issuer was creditworthy by analysis and make their recommendation to Robert G. Wilson, and then an ongoing analysis and following of all our issuers.

Q Under the head of the department we find coordinator, George Van Cleave, that was you, second in command?

A. That is correct.

Q The Credit Department did not report to you?

A. No.

Q But the other functions reported to you?

A. Yes.

Q. Including the men who as so-called buyers arranged the acquisition of notes for sale?

A. That is correct.

Q. Then under sales we have the national sales manager and various regional sales managers, with salesmen reporting to them in their respective locations.

A. That is correct.

Q. Is there one other department or operation in Goldman, Sachs that is concerned with the day-to-day operations of the Commercial Paper Department but is not shown on this chart?

A. Yes. That is the Note and Discount Department, and the Note and Discount Department is the department that does the processing of all our transactions.

Q. To whom does the Note and Discount Department report?

A. They would report to the administrative partner of Goldman, Sachs, George Doty.

Q. Who arranges the financing of inventories?

A. That also falls under George Doty.

Q. But is not done by the Note and Discount Department?

A. It is not done by the Note and Discount Department.

Q. What are green, yellow and white sheets?

A. The white, yellow and green sheets are all credit information. The white sheet is a duplication of a company's annual report, having the last year's figures for comparative purposes alongside. Normally, two white sheets would be sent so that it would cover three years of figures.

The yellow sheet is an information sheet that describes the company, what they do, and it highlights some of the pertinent figures, such as sales, earnings, net worth, et cetera, but doesn't go into the same detail that the white sheet does, along with the banks of deposit of the corporation.

The green sheet is a sheet that's prepared for interim information that would come out in-between the printing of the yellow and the white sheets -- for example, if a quarterly earnings report, maybe that a company has done some financing, any public interim information that would come up between the printing of those other sheets.

Q. What is the purpose of including on the yellow sheet a list of the names of the banks of deposit of the issuer?

A. It had been common practice in the business for investors, particularly because so many of them were commercial banks, to be able to make a checking with another commercial bank as to their experience with the account and what they feel in general about the credit.

Q. So that is included as a service to the investor, to assist him in checking up, if he wants to?

A. That's correct.

Q. How are the white, yellow and green sheets distributed or delivered to investors?

A. Well, there are two ways in which an investor would receive those sheets, and let's talk first of all about a potential investor, someone who is interested in seeing the figures of the paper that you sell and one might send those sheets prior to any sale.

Also, it was quite customary for the major New York banks to want to receive a copy of everything as soon as it was released and printed up, so we would send those over automatically whenever any of the names that they purchased would have their year-end figures or interim figures published.

Q. Regardless of whether or not at that moment they held a note bought from Goldman, Sachs?

A. That's correct.

Then the other way was when someone purchased commercial paper, if our records showed that they did not have the financial information, then we would enclose it with the sales bill.

Q With the what?

A. With the sales bill.

Q Was it sent with a sales bill or with another document called a confirmation?

A. Letter of confirmation.

Q With respect to the March 16, 1970 purchase by Franklin Savings Bank, I show you Defendants' Exhibit PD for identification and ask you what that document is.

A. This is a special order sales ticket.

Q What does it show you about that transaction?

A. Well, starting from the top, the date of discount, where the delivery was to be made, the name of the investor, their account number, then the face amount of the note --

Q You can omit that, we can read that.

A. On the right-hand side there is the initials of the salesman, Robert H. Kaufman, just slightly to the left of that is a time stamp which tells us when we transmitted this sale to the Note and Discount Department --

Q Are you referring to the stamp that says "11:05 A.M., 70"?

A. Yes. I believe that's a six.

Q 11:06 A.M., 70?

A. That's correct.

Q. That's the date of his transmitting this document to the Note and Discount Department?

A. Yes. Then right next to that is special order sale which -- there are two types of sale, special order and inventory, and there are separate tickets for those.

Q. I will come to the question of the difference of those procedures, but at the moment this tells you it was a special order sale?

A. Yes.

Q. And not a sale of a note in inventory?

A. That's correct.

Q. When with reference to the time of the telephone call in which this purchase was made was this time stamp put on of transmittal to the Note and Discount --

A. Normally that would be within five minutes.

Q. Within five minutes of the phone call?

A. Yes.

Q. Will you tell the Court, please, what happens in the carrying out of the transaction when the Note and Discount Department receives this -- is this called a salesman's ticket?

A. Sales ticket. It was transmitted over a Datafax machine. As soon as the Note and Discount Department would receive it --

Q. Excuse me. That's because the Note and Discount Department is at some other location?

A. That's right, they are in another building.

Upon receipt of this -- the information and this ticket, they would prepare a sales bill which would put all the details of the transaction.

MR. PIEL: Pause there, if you will, please.

First of all, I offer Exhibit PD for identification in evidence.

MR. STITT: No objection, your Honor, I think it has been authenticated by this witness.

xxx (Defendants' Exhibit PD was received in evidence.)

Q. I show you Exhibit PQ for identification --

xxx (Defendants' Exhibit PQ was marked for identification.)

Q. (Continuing) -- and will you please explain to the Court what that document is.

A. This is a copy of the sales bill.

Q. That's the sales bill.

What else does the Note and Discount Department do besides prepare this sales bill which you say shows all the details of the transaction?

A. They prepare that immediately, and then await delivery from the issuing bank of the issuing company to deliver the note to Goldman, Sachs. In this case I believe it was Morgan Guaranty. They would receive the notes in from Morgan Guaranty versus Federal funds --

THE COURT: Wait a minute. You say received versus Federal funds.

THE WITNESS: Received versus payment of.

THE COURT: You mean against payment?

THE WITNESS: Yes.

A. (Continuing) Before they release the Federal funds --

THE COURT: This comes from Morgan Guaranty, the note?

THE WITNESS: Yes. The Morgan Guaranty was the releasing agent for the Penn Central Transportation Company. Notes were lodged with them.

Q. Are you telling the Court that notes executed by the Pennsylvania Company are lodged with the Morgan Guaranty Company at their office in New York until Goldman, Sachs buys it by releasing Federal funds?

A. Until instructed by the Penn Central Transportation Company to deliver those notes against payment of Federal funds to Goldman, Sachs.

THE COURT: In other words, you notified Penn

Central, or whatever it is, that you are purchasing a half a million dollar note from them with certain maturity?

THE WITNESS: Yes.

THE COURT: Penn Central then calls Morgan Guaranty and tells them to deliver that note to you against payment in Federal funds?

THE WITNESS: Yes.

THE COURT: And you have this slip here, and when you give them the Federal funds and you have the note in your hand, this slip is operative? Is this delivered to the Morgan Guaranty or filed in your office?

THE WITNESS: This is the sales bill, and this would be delivered to the Chemical, you see, in this case, because that was the delivery bank of Franklin Savings.

What we would do, if I may for a moment, is prepare a purchase bill, if you will, which has the exact same type of format, and we would be purchasing let's say in this case at 8-5/8, as I mentioned earlier, at a higher rate, as that would be our bill as far as the railroad was concerned.

As soon as that bill was received and the note was released, the Note and Discount Department would make sure the note was authentic, and they do that by having copies of the resolutions and signatures of those people authorized to sign the notes. They check to see that that is correct, and if that is correct then they release the payment of funds. Having done that --

Q. Is that Note and Discount that is doing that?

A. Yes, Note and Discount.

Having done that, they attach the note to the sales bill and a messenger takes that to the Chemical Bank and gives them the note and the sales bill and the Chemical Bank credits Goldman, Sachs' account for that amount in Federal funds.

Q. When in this instance the Chemical Bank credits Goldman, Sachs' account in Federal funds against delivery of that note, how soon can Goldman, Sachs draw on those Federal funds?

A. Immediately.

Q. Is there anything else required to complete the sale of the note, except delivery and payment?

A. That's it, delivery and payment.

Q. After that transaction has been completed, does the Note and Discount Department do something else?

A. Yes.

Q. What does it do?

A. They make up a letter of confirmation, attach the latest financial information and a copy of the sales bill, and they mail that to the investor.

Q What is the purpose of that mailing?

A. It is for an after-the-fact reporting of the transaction that took place and to be sure that the investor has the latest financial information.

Q What does the investor in the typical case want those sheets for, having bought the note already?

MR. STITT: I object to the form of that question.

THE COURT: Sustained. You are talking about the green sheet now?

MR. PIEL: Yes, your Honor, white, yellow and green sheets.

THE COURT: All three?

MR. PIEL: Yes. Whatever the sheets are that happen to be mailed with the confirmation.

THE COURT: Why do you mail them?

Q Why do you mail them?

A. We want to be sure that they have them.

Q Why do you want to be sure they have them?

A. We think they should be part of their file.

Q Do you know why they want them in their file?

MR. STITT: I object to the form of that question.

MR. PIEL: I am asking if he knows.

THE COURT: Unless they were specifically asked by this purchaser --

MR. PIEL: All right, and there is no evidence of that.

THE COURT: I gather this is just the ordinary custom in the defendant's office to do that for anybody.

MR. PIEL: That's right.

THE WITNESS: It is general procedure.

Q. What are blue sheets?

A. Blue sheets are reporting -- a memo reporting of contact with the client.

MR. PIEL: Before we go on to that, I had better tend to business here and offer PQ.

THE COURT: Any objection?

MR. STITT: No objection, your Honor.

xxx (Defendants' Exhibit PQ was received in evidence.)

Q. Mr. Van Cleave, I am asking you what blue sheets are, so-called, in the Commercial Paper Department operation.

A. Yes. As I mentioned, they are a memo on the report -- a memo report of the contact of a client.

Q. Might that client be an issuer or an investor?

A. Right, issuer or investor.

Q. Either one?

A. Right.

Q. What becomes of the blue sheet?

A. They go to -- the original copy, the blue sheet, goes to the credit file.

Q. Is the credit file -- where is the credit file maintained?

A. In the Credit Department.

Q. What is the credit file?

A. The credit file is an Acco binder that contains the latest financial information, it contains blue sheet reports, copies of documents, letters of communication, newspaper clippings, anything that pertains to that account.

Q. I show you Defendants' Exhibit A for identification and ask you what this book is.

A. This is a credit file.

Q. Will you examine it and tell us, if you know, which credit file?

A. Of Penn Central Transportation Co.

Q. Do you have authority to look in credit files?

A. Yes, I do.

Q. Was there a policy in Goldman, Sachs in 1969 and 1970 with respect to access to credit files?

A. Yes.

Q. What was the policy?

A. The policy was that the only people that had access to the credit files were the Credit Department, the buyers of paper, those dealing with the issuer themselves, the new businessman that was assigned to the account or any partner of the firm.

Q. And if in the case of a -- if a blue sheet pertained to an investor client rather than to an issuer client, where would that blue sheet go? Would that also go into a so-called credit file?

A. To a so-called credit file, yes.

Q. Who would have access to that credit file?

A. If it was an investor, then the salesman who handled the account would have access to it, and then all the other people that I mentioned.

THE COURT: I gather, then, that salesmen under this table of organization, such as Kaufman, would not have access to Exhibit A.

THE WITNESS: That's correct.

Q. How long had that policy been in effect at Goldman, Sachs?

A. As long as I have been with the firm.

Q. Do you know what the reasons were for that policy?

MR. STITT: I object to the form of that question.

THE COURT: So the right hand wouldn't know what the left hand was doing.

THE WITNESS: That sums it up very well.

Q Why was it of any importance for Goldman, Sachs for the right hand not to know what the left hand was doing?

MR. STITT: I object to the form of this question because this is knowledge that Goldman, Sachs has, and if they wish to insulate the salesman or anyone else who might have disclosed this information to Franklin, it is, I contend, no defense under our claims under the Securities Act. This is information that is deemed to be knowledge of the partnership --

THE COURT: I will take it. You can argue as you wish from the existence of the fact.

A. The reason is because it is really confidential material. Quite often reports will go in there that maybe one of the issuers is going to do an equity financing. If that word got down to the fourth floor, which is our security trading, or got out on to the street that there was going to be a stock offering, that could dilute the share per earnings, the stock could go down, it just wouldn't be very good for that to get out. The company could be working on a merger that we are involved in, and if that leaked out, why, that again wouldn't be any good for anyone.

THE COURT: Of course, there is some question at the SEC whether you don't have to tell the whole world as soon as you get the first phone call regarding the merger.

Go ahead.

THE WITNESS: Also, I just don't think people would do business with us very long if we let these confidential matters get out into the street or any other place.

Q They wouldn't talk to you very long, would they?

A. No.

MR. STITT: I object to the form of that question.

THE COURT: It is perfectly obvious, isn't it, Mr. Stitt?

Q That is preliminary to asking you what difference it would make to the operation of the Commercial Paper Department if they didn't talk to you.

A. I don't understand the question.

Q Would it have any effect on the way you would be able to conduct a credit -- continuing credit surveillance of that issuer if because you didn't keep these confidential they weren't willing to talk to you?

A. Certainly. You wouldn't get any information out of them.

Q In that case, your credit investigation would have to be made only on published figures, without whatever help you could get by talking to them?

A. Correct.

Q. I would like you now, with economy of time, but nevertheless giving us a picture, to tell the Court what happens on the typical working day in the operations of the Commercial Paper Department with respect to getting paper into the market on a given day.

What's the first thing that happens in the morning that relates to that?

A. I just wonder if it wouldn't be best for me to start the afternoon before.

Q. All right, start the afternoon before.

A. Because that is when we start -- it is a chicken-egg thing.

THE COURT: How about starting this afternoon and going until tomorrow morning? Go ahead.

A. (Continuing) At the close of the business of the day, we then start putting together our availability of paper for the following day, and this is done by taking a look at what paper that we have maturing for that day, any information that we might have from issuers as to additional monies that they will need, or maybe they will not need quite as much money that is running off, if we have a seasonal borrower, that this would be their time to come into the market. We gather all the information with regard to the paper that we have for sale. That is what we call special order sales.

There is another document we use which is our inventory position and shows the notes that we already own.

Q. You refer to an inventory sheet.

A. Yes.

Q. I would like to show you at this point Defendants' Exhibit DX for identification.

xxx (Defendants' Exhibit DX was marked for identification.)

Q. I am going to interrupt your account there to deal with this document first, since you have mentioned it.

Is this the inventory sheet for March 13, 1970, the afternoon of March 13, 1970?

A. Yes.

Q. The calendar shows that that was a Friday, the Friday before the Monday on which Franklin Savings Bank purchased the note in issue here.

A. Correct.

Q. So this was in preparation for Monday, March 16's operations?

A. That's right.

Q Will you go on, then?

A When we compiled this information, we would then have a conference call with all our sales offices. This involved approximately twenty salesmen, and they are located in, in addition to New York, Boston, St. Louis, Chicago and Los Angeles. We would advise them of the special order paper available for sale, we didn't read this inventory sheet because they would have a copy of that the next day, and talk about what interest rates looked like for the following day so that they could begin doing some selling in the afternoon. However, there was not too much selling done in the afternoon.

Then immediately the next morning we would, the first thing we would do is fine-tune our rates, and this goes back to what I testified to earlier, that we would check all the various money market instruments and determine the rate at which we felt that the paper should be sold.

We would then have a very brief conference call to allow the salesmen to know of any changes that were made in the availability and to know what today's interest rates are. Then we would begin the sales day.

Q Before you go on to beginning the sales day, you talked about fine-tuning rates.

Who does that? You said "we." Specifically who does it?

A. The buyers of paper who report to me are the ones that do that. I try to let them come up with the ideas and see what they feel that the rate should be, and then I look it over, and if I agree, we go ahead.

Q. You are in charge of that determination?

A. Yes.

Q. You do that on the basis of their suggestions and your getting information from the market place about the rates of other instruments?

A. That's correct.

Q. Including direct paper?

A. Right.

Q. Does this continue throughout the day, if there are changes in the market?

A. Yes, it does. The way in which that is done is through this -- these twenty men that I have throughout the country, as they are selling the paper and they might run into a rate resistance from some other instrument or some other commercial paper, they would immediately telephone me to let me know that one of their investors was buying at -- could buy a commercial paper of a company at a higher rate than what we could offer that was a comparable name. That would be helpful to me to know whether we were priced right.

It worked the other way, too. Sometimes our rates might be a little high. They would let me know that so we could lower it. It was an ongoing communication through the sales day.

Q You talked about then beginning the selling day. What happens?

A. We then start to match up the buy and the sell side, in that you have this paper available and you gather the tickets as they come in from the -- over the telephone from the regional offices and directly from the tickets that you saw in New York, and when we get to the point where we have sold that much paper for that day, then we stop selling that particular name and report the transactions to the issuing companies.

It doesn't always come out that way. Sometimes you stop a little bit short, sometimes you might have to go a little bit over, which would necessitate a phone call to the issuing companies, until we get to the close, which is at 12:30 everyday, and then we would make a decision as to the unsold paper, whether or not we would position that or whether it would be borrowed from the banks.

THE COURT: What do you mean, borrowed from the banks?

THE WITNESS: That the issuing company would borrow from the banks.

THE COURT: You mean instead of selling their paper, they would go to the banks to borrow?

THE WITNESS: That's correct.

THE COURT: Who makes that decision, you or the issuer?

THE WITNESS: Well, we work on it on a joint basis. During this period of time, we tried very hard to get them to use the banks more than us because it was very costly to us.

Q The inventory sheet, Exhibit DX for identification, this just showed paper in Goldman, Sachs' inventory?

A. Yes.

Q How are the salesmen informed of the availabilities of special order sales?

A. They would take that down on the telephone, on that afternoon conference call, and they would just write that down on whatever form they used. Everyone used a different form.

Then as the day progressed, we would telephone them as the paper was being sold out or that there was a block of ten million of a name and half of it was sold, we would telephone them and say there is only five million left, because everyone is working on the same pieces of paper simultaneously.

MR. PIEL: I offer Exhibit DX in evidence.

MR. STITT: Your Honor, I believe this document has been authenticated by the witness, and I would not object.

xxx (Defendants' Exhibit DX was received in evidence.)

Q Now we are at the beginning of the selling day. Let's go to the New York office.

How do the salesmen operate on the morning of the selling day?

A. Well, it is rather chaotic. It is by word of mouth. They just holler at the buyers to get the special order paper.

Q You will have to give us the setting.

Are they all in the same room?

A. Yes, we are in a trading room, and the salesmen are at one end and then the buyers are at the other, but very close. The desks are right up against one another.

Q How many buyers are there in New York?

A. Three.

Q How many salesmen, roughly?

A. Six.

Q And their desks are all near each other?

A. Right.

Q As the buyers talk to the issuers to arrange for the issuance of paper that investors want, salesmen talk to investors about meeting their needs for getting their funds to work that day?

A. That's correct.

Q How long does the average salesman's conversation take on the telephone with the investor in which the commercial paper is sold?

A. Two minutes, two to three minutes.

Q How long is the selling day? Did you say it ended at 12:30?

A. 12:30, yes.

Q Starting when?

A. Nine-thirtyish.

Q Why is the selling day restricted to three hours in the morning in that way?

A. It has to do because of the fact that commercial paper is mostly done on a same-day basis, it is bought and sold and delivered all on the same day, unlike a stock that has a settlement period or a bond, and in order to get the banking system to be able to handle the details, because they handle both the sell side and the buy side, they must cut off for receipt of delivery by 3:00 o'clock in the afternoon.

Let me just back that down for you as to how these cutoffs work and why we go to 12:30.

We must deliver to them by 3:00. They must deliver to us because they are also the releasing agents for the issuers by 2:00 o'clock. In order for us -- then we take that hour and turn it around and redeliver it. Then, in order for the banks to get it to us by 2:00 o'clock, they must have the issuer phone them no later than 1:00 o'clock because they have this tremendous amount of paper to deliver to the dealers, so, therefore, they cut off receipt of instructions from the issuer by 1:00 o'clock.

So, in order for us to be able to make our telephone calls to the issuing companies to give them the details, we cut our sales off at 12:30.

THE COURT: Do I gather most of these issuers keep their commercial paper on deposit with the bank of some sort?

THE WITNESS: Yes, and the bank countersigns it.

THE COURT: Is that what you call lodging?

THE WITNESS: That's right.

Q With regard to the fact that most of this paper is sold for same day delivery, Mr. Bock told us that he bought Penn Central at 9 percent for three months in order to lock up 9 percent for three months.

If he had to wait one day for the delivery of the note, how much interest would he have lost?

A. He would only get eighty-nine days interest instead of ninety days. The dollar amount --

Q $250, my arithmetic says.

MR. STITT: Your Honor, we might have the witness testify rather than my adversary.

MR. PIEL: Well, that's like a calendar.

THE COURT: Go ahead.

Q Coming to the question inventory, Goldman, Sachs' inventory, I would like you to explain to the Court how it came about that this practice developed and was continued up in to 1969 or 1970 of dealers having inventory and making some of their sales out of inventory.

A. The paper business went along darn near one hundred years going in one way, and it wasn't until the mid-1960's when tight money occurred and smaller companies and companies in industrials availed themselves of the market. In years prior, the method in which you purchased paper from an issuer was to call him up three days or a week ahead of time and order the paper for thirty, sixty, ninety days, and have him mail it in to you, you put it into your inventory and then you began to sell it. The markets weren't fluctuating that much and no one could really get hurt.

THE COURT: Let me get this straight.

Do you have to coax an issuer to issue paper?

THE WITNESS: In those days we did.

THE COURT: Why would you do that?

THE WITNESS: Because the banking system had built up such a PR job, that it was surprisingly difficult, even when you could show a cost savings, to get a company that had been borrowing from the banks for fifty or sixty years to suddenly desert the banks, as they looked at it, that's what the banks told them they were doing, and use the paper money.

Eventually that changed when it just became good sound financial management to use a cheaper source of dollars. But it took the industrial world a long time to really come around to that way of thinking.

So, there was really no exposure for anyone as far as the rates were concerned because the rates didn't change much. We would just simply put it on the shelf, as we called it, and try to sell that before it was dated, or, in other words, before the date they needed the money so that they wouldn't have to finance it. For the most part you could do that.

As the business began to change, we still didn't change -- we changed our method of operating ahead of time, we couldn't change this method of inventory because the issuers needed their dollars, and so, therefore, we started to build these larger inventories.

Q What is the utility of inventory in connection with being a commercial paper dealer or what was it at that time?

A. I am sorry, I missed the first part of that.

Q What was the usefulness to a commercial paper dealer at that time, '59 or '60, in having inventory, in what respects was it useful and in what respects was it not?

A. '69 and '70, you mean?

Q Yes.

A. It really wasn't very useful to us from the standpoint of costs. It was very expensive for us to carry inventory because it costs us more to finance it than the rate at which we purchased it, which we referred to as negative carry. That was a big disadvantage, particularly to those issuers that were in on a day-to-day basis.

The advantage to it would be that if you had a seasonal borrower who came into the market and he needed $20 million on that day, let's say, for example, Heinz, who is going to buy tomatoes to make the ketchup, why, they would need $20 million now so they could buy the tomato crop, then pack it and eventually sell it and then pay the debt off, that's what they did, so, there, inventory was very useful to be sure we got the $20 million worth of business, because the paper market wouldn't do them one bit of good if they didn't get the dollars on the day they needed it.

Q. What was the situation with respect to other kinds of issuers?

A. For those who were in the market place daily, it was a big cost to us, both from the standpoint of the carriers, as I mentioned, and also interest rates were rising. So anything that you put into your inventory, when the rates were going up, you would lose on it immediately the next day or two.

Q. Let me ask you this.

What was the relationship during this period, 1969-1970, what was the relationship of the discount earnings that you realized during the period that you held paper in inventory and the interest rates that you had to pay to the banks to finance the position holding that inventory?

A. It was running anywhere from a half to three-quarters of one percent and sometimes even a full percent, for short periods of time.

Q. In other words, it cost you money out of pocket to finance it?

A. Yes.

Q Had that always been so?

A. No. In the early years it wasn't a problem because you managed to get all the paper sold before it was dated. But then during those periods of time, usually the carry was positive.

Q If you sold the paper before it was dated, that would mean you wouldn't have to pay for it until it was dated; is that right?

A. You never paid for it before it was dated so if you sold it before it was dated, there was no financing necessary. Even in that time period when it was necessary to finance, the carrier tended to be positive which means that you could borrow at a lesser rate than the rate on the paper.

Q You could pay the banks less per million dollars to carry it than you were earning as discount by having it in your inventory?

A. Right.

Q That was changed by 1969?

A. By '66 is when it really started, when the tight money came in.

Q When did the tight money period begin?

A. The first one was '66 and then again in '69.

Q. In '69 the tight money period was a period of rapidly accelerating interest rates all the way up in to early 1970?

MR. STITT: If your Honor please, I do object to this as leading. I would ask that --

THE COURT: It is embraced in an exhibit that is before me.

Q. It is shown in an exhibit, your Honor, and that is a preliminary question to asking you to explain now to the Court how the period of rising rates not only involves the negative carry of paying the banks more than you are owing, but involves an escalation of that cost through holding paper in inventory.

A. For example, if you bought in a piece of paper at, say, 8-1/2 and you had to -- you bought that in at 8-1/2 for sale at 8-3/8, let's say, and the interest rates went up 1/8 the following day, then you have to then move the selling rate on that paper to 8-1/2 which then completely wipes out your profit. The market was moving fast, and I know of times during this period when we changed them upwards more than once a day, so it was very commonplace within a day or two, you have a quarter or a 1/8 loss on an item.

Q. That is a loss that occurs from marking up the paper before you sell it; is that right?

A. Marking up the yield or down in price.

Q. Marking down the price?

A. Yes.

Q. So that you wipe out the spread that you were going to get or get into a negative spread situation?

A. Correct.

Q. In addition to that and in addition to the negative carry, did the relationship between your earnings and -- were the bank's rates rising at the same time?

A. Yes.

Q. All the rates went up together?

A. Yes. The banks were very tight. They didn't particularly care to lend the money, so if they were going to lend it, they were going to get a pretty good price for it.

Q. Apart from marking up the paper in order to be able to sell it, if you held it a week the financing costs kept increasing on that piece of paper relative to what you were earning on it?

A. Right. I recall, what I would do, I would see the interest carry, let's say, be one-half of one point negative on a very short note. I just mark it up immediately even if it was break even because then I would at least break even and not lose the one-half of one percent to carry.

Q. Again referring to terms that occur in the documents here, is there a term called distress selling?

A. That's exactly what I just described. That is seeing that the financing of this paper is going to be so high above what you paid for it that you might as well mark it up in yield and get rid of it, even though it is not on the market, it is off the market, just to get it out of your position --

Q. Does the term distress selling have any relationship to the creditworthiness of the paper that you are marking up that way?

A. No.

MR. STITT: I object to the form of that question.

THE COURT: Overruled.

A. (Continuing) No, it certainly does not.

Q. It doesn't mean it is damaged goods?

A. No.

Q. It just means that the interest rates have run away from you?

A. Or that I have priced it wrong, yes.

THE COURT: We will have an afternoon recess.

(Recess.)

THE COURT: You may proceed.

MR. PIEL: I offer in evidence Exhibit CZ, to which I understand from the pretrial order there is no objection. It is a tabulation made up from the master computer run, Plaintiff's Exhibit 93.

THE COURT: Any objection, Mr. Stitt?

MR. STITT: No objection, your Honor.

THE COURT: All right.

xxx (Defendants' Exhibit CZ was received in evidence.)

MR. PIEL: I will just make a correction.

It says data obtained from DX-478, which was a document number. That is the same as Plaintiff's Exhibit 93. It should say data obtained from Exhibit 93.

I offer in evidence Exhibit CS, the authenticity and correctness of which have been conceded. This is a tabulation of the daily weighted average financing rates paid by Goldman, Sachs & Company to carry commercial paper inventories.

MR. STITT: Your Honor, my only objection goes to relevancy.

THE COURT: Overruled.

xxx (Defendants' Exhibit CS was received in evidence.)

MR. PIEL: Finally in this group, Defendants'

Exhibit CX for identification I offer in evidence. This is another tabulation of related information. One is the range of rates paid on a daily basis or an every-couple-of-days basis in arranging financing, finance of commercial paper inventory, and also another for the same date, the prevailing selling date on commercial paper and inventory of that day.

THE COURT: I am getting a little lost. I understand CS but I don't understand this one.

MR. PIEL: This is really supplementary information. It adds to the picture. The fact that in arranging the financing on any given day, they may pay depending upon the institutions that are interested in lending that day, or another thing that I will come to with the witness, the so-called repose or repurchase agreements, they may be able to finance some of it at 5 percent and others of it as high as, on the same day, 6-3/4 percent. That has been averaged out on a weighted basis in the other exhibit.

The prevailing selling rate is the prevailing rate at which on the day when they were paying those bank charges to finance inventory they were discounting the paper that they were selling.

It shows that in some instances, they were paying more to finance it than they could sell it for.

THE COURT: I understand that, but if you look at Exhibit CS, you have a daily rate on January 2, 1969 of 6.73.

MR. PIEL: Yes, your Honor.

THE COURT: On Exhibit CX you have 6.875.

Shouldn't they be the same?

MR. PIEL: Let me find the date, your Honor.

THE COURT: January 2, 1969.

Do you want to ask the witness?

MR. PIEL: Yes. I could give you the explanation, but I will elicit it from the witness.

The explanation is that the CX --

MR. STITT: If the witness can give it to us --

MR. PIEL: CX by its title refers to bank loans.

BY MR. PIEL:

Q. Mr. Witness, was there another way also of financing commercial paper inventories?

A. Yes, the other method was repurchase agreements, and those were done at a lesser rate than the bank charge, which would bring your weighted average down.

MR. PIEL: Your Honor, the note on Exhibit CS says, "Rates are based on borrowings which included repurchase agreements and bank borrowings."

THE COURT: Isn't CS the real document and not

CX?

MR. PIEL: Yes, it is. CX I would like to have particularly for Column 2, the prevailing selling rate.

THE COURT: All right. Received in evidence.

xxx (Defendants' Exhibit CX was received in evidence.)

BY MR. PIEL:

Q With reference to Plaintiff's Exhibit F-95, the compilation called The Top Ten, this was received in evidence this morning, and Mr. Stitt and I gave some unofficial testimony about it which I would now like briefly to make official with Mr. Van Cleave's help.

Will you please tell the Court what that document is?

A. Yes. This is a list of the top ten inventory positions by amount on a daily basis.

Q That is by top ten, you mean the names of the issuers?

A. The names of the issuers with the amount that we held in inventory.

Q What was done with that list of top ten? Is that a daily list?

A. It is a daily list.

Q What was done with it?

A. You heard me speak of the afternoon conference call with the regional offices. These top ten names were read to them with the amounts, and for the New York office they would receive a copy of this top ten list.

Q What did you tell the salesmen was the purpose for reading them the top ten?

THE COURT: Get rid of them.

A. It goes back to what your Honor said this morning. We had more black shoes than brown, but, anyway, the reason we did that is the inventory sheet as you have seen it has five pages to it, and when a salesman is working on a two or three-minute phone call and he has to try to fumble through this to find paper that the investor will buy as opposed to hollering over to a buyer and saying "I want one million lines" and the buyer says "That's good," you know he is going to take the path of least resistance and do the thing that takes the lesser amount of time.

So what we did to highlight this was that if he had investors that bought these names and he was talking to those investors on the phone, I wanted to be sure he knew that we had these in position, and this was a quick reference rather than thumbing through all of those pages of inventory sheets.

Q When you spoke of hollering across to the buyer, he might be hollering across to the buyer about the paper of one of those issuers on the list of ten; is that right?

A. Yes.

Q. And thereby make a special order sale of the same paper instead of moving paper in inventory?

A. That's correct.

Q. Are there any other respects in which it is easier for the salesman to deal with a special order sale than to deal with an inventory sale?

A. Yes, there is. It is the method in which that sale is confirmed to the salesman. I think you just said how you holler a special order. It is just a holler and a yea or nay immediately.

From the inventory sheet, that is handled and controlled by the Note and Discount Department that I spoke of earlier because there is a necessity to finance this position which is done through that area. They must keep control of inventory and position, so, therefore, in order for a salesman to get confirmation of a sale, he must phone the Note and Discount Department, find out if the paper is there, then tell the investor that it is there --

Q. By that you mean find out if the paper is there, find out if some other salesman has sold it?

A. That's right. There is more to it than that, too, really. Whether it is already being financed. So let me back that up a little bit.

The salesman telephones downstairs and finds out whether or not (A), the paper is still there, do we still own it or has someone else sold it, or is it already being financed, is it already out on one of his repurchase agreements that we spoke of or tied up in a bank financing.

THE COURT: You say you spoke of repurchase agreements. I don't think you have spoken about it yet. Mr. Piel said he is going to ask you questions about it.

Q. I am going to ask you to describe how a repurchase agreement works and with whom you have it.

A. A repurchase agreement is done with the same type investors that you sell commercial paper to, other corporations, banks, who have short-term funds to lend for a day or two.

Rather than write in a one or two-day piece of paper, why, we will take a note from our position, let's say of thirty-day variety, and we will offer it to this customer with the agreement to repurchase it in one day or two days, maybe.

THE COURT: Would the price be fixed at the time of the purchase and sale?

THE WITNESS: Right.

THE COURT: And you are locked in to that price?

THE WITNESS: You are locked in for that. Although Mr. Doty will go into this more when he testifies.

What we will do is be sure that that repurchase rate was at a lesser rate than we were paying at the banks, so it made it attractive for us to do that.

Q. What did that have to do about the availability of inventory paper for sale?

A. Because the inventory positions were pretty high at that particular time, we wanted to make sure that we could finance it and finance it the cheapest way possible, and the repurchase agreement was that avenue.

However, there were a number of repurchase customers who said "I don't want to wait until 12:30 to find out what the collateral is. I want to know right away."

So, therefore, it was necessary to lock up that collateral and give it to them for the one or two days. There is a way of doing this even though the collateral is out, and that's by issuing what we call a due bill, which means our agreement to deliver that note the following day, but so few investors will do that that it really was impractical.

THE COURT: I thought all due bills did is get you a cheaper rate at a hotel.

MR. STITT: I thought it was a due bill, your Honor, which is supposed to be our largest bond.

MR. PIEL: Obviously, it wouldn't be worthwhile to do all that pencil sharpening and sending a paper around if there weren't such enormous amounts involved.

Q. Did there come a time in the latter part of 1969 when -- Mr. Maney suggests that because we are trying to identify some verbiage in these documents to make them more intelligible when the Court considers them, is there a jargon name for repurchase agreements?

A. Repo.

Q. R-e-p-o?

A. R-e-p-o.

Q. The plural is r-e-p-o-s?

A. Right.

Q. Did there come a time in the latter part of 1969 when a study was made of the profitability, the operations and profitability of the Commercial Paper Department?

A. Yes.

Q. How did that come about that that was done?

A. Well, Bob Wilson and I sat back and took a look at how this business was developing and what was happening to us as a result of the costs incurred from inventory positions, and even though we had been operating that way for many years, we felt it was time to find a much better and efficient way to operate our business, plus the fact that the partnership was -- would like to have more profits out of the Commercial Paper Department.

Q. Let me ask you, did you have some critics in the partnership of the profitability of the Commercial Paper Department?

A. Yes, we sure did.

Q. How was the study conducted?

A. We took the -- this came about in late October, first part of November 1969. We decided to do this study. Then we put together the -- we took the latest twelve months that we could get on which we had information available, which, I believe, was from September 30, '68 to September 30, '69, was the last twelve months that we had data for, and we compiled a study as to -- take a good hard look as to what was happening to our business and also to make some recommendations --

Q. Was that data for the twelve months exhumed from your records and put into a computer --

A. Yes.

Q. -- to conduct this analysis?

A. Yes.

Q. Did it result in the study which had been placed in evidence here by Mr. Stitt as Plaintiff's Exhibit 36?

A. Yes.

MR. PIEL: I think I see that the Court has a Xerox copy, and with the Court's permission and Mr. Stitt's, I would like to substitute a clean duplicate original because it is much more legible than Xerox.

MR. STITT: Delighted, your Honor.

Q. Is that document the result of the study?

A. Yes.

Q. It is dated March 1970. That's the date -- is that the date when it was submitted to the partnership?

A. That's correct.

Q. You and Mr. Wilson and three others were the authors of it, it says on the flyleaf; is that correct?

A. That is correct.

Q. How early were the results of the computer analysis available to you, however, before you got it in to this beautiful final printed form?

A. The first part of December '69.

Q. Had you arrived at some conclusions from the data by the first part of December?

A. Yes, we sure had.

Q. What had become apparent to you by the first part of September with regard to the profitability --

THE COURT: December.

Q December, excuse me, 1969, about the profitability of the department?

A. Well, it became apparent that the business had changed and that we had to change with it and change our method of operation, and particularly when it pertained to the inventory position and when we were going through tight money periods. It was clear that we were losing well in excess of $1 million on both the cost of carry and also the marking up of the rates, and when one thinks it through, what we wound up doing was doing the bank financing for the issuers rather than let them do the bank financing themselves, at quite a cost to us.

Q At Page 5 near the foot of the page the statement appears, this is in Exhibit 56, "We incurred two types of losses, a $1,300,000 loss in financing the position and a $1,372,147 loss from marking up paper in inventory."

Had you discovered that by the first of December?

A. Yes.

Q You referred to the effect of aging paper in inventory because you buy it on one day during a period of rising rates, you hold it for two, three, four days, and so on.

Did you find some information from your computer analysis of those previous twelve months as to the average aging of paper in inventory?

A. Yes. The average was running about four days, but by the time we got to this period of analyzing this raw data, we found that the average was closer to a week to ten days. It was worsening as the interest rates continued to climb.

Q. The steeper the slope of the interest rates, the longer the carrying in inventory?

A. Right.

Q. The greater the loss?

A. Correct.

MR. PIEL: Now, I would like to offer Exhibit BQ.

xxx (Defendants' Exhibit BQ was marked for identification.)

Q. Were you one of the authors of this document, Mr. Van Cleave?

A. I was.

Q. Dated September 10, 1969, and addressed to the liaison member of management committee from you and Mr. Wilson?

A. That's correct.

Q. This was before you had initiated the study that resulted in Exhibit 56?

A. That's correct.

Q. You didn't have the information that you got from that?

A. Right.

Q. What was the occasion for you and Mr. Wilson writing this memorandum?

A. Well, there was tremendous pressure on us to keep the inventory positions at a lower level.

Q. Where did the pressure come from?

A. The pressure came from the management committee through George Doty.

Q. Mr. Doty being in charge of the financial aspects of this financial house; is that correct?

A. That's correct.

MR. PIEL: I offer this in evidence.

MR. STITT: No objection, your Honor.

xxx (Defendants' Exhibit BQ was received in evidence.)

Q. On Page 2, you and Mr. Wilson were giving serious consideration, it says, to a number of policy changes that could permit you to compete successfully and increase your outstandings to six billion from -- what was it then -- from five billion, right?

A. Right.

Q. Outstandings means that outstanding in the market place in the hands of investors were a total of $5 billion face amount of notes which you had placed; is that correct?

A. That's correct.

Q. And in order to increase the volume of your business and your earnings you were thinking about maybe stepping that up by 20 percent?

A. Right.

Q. There are four alternatives listed on Page 2 of things that might be done, perhaps alternatives in the sense that you couldn't do them all.

The first was "Authorize an increase in our commercial paper inventory ceiling to three to four hundred million, providing, of course, such positions can be financed.

What was your inventory ceiling at that time?

A. 250 million.

Q. Who had imposed that?

A. The management committee.

Q. They told you in your operations that you just couldn't tie up the credit of Goldman, Sachs with financing for more than that amount?

A. Without seeking permission.

Q. Without seeking special permission to exceed that?

A. That is correct.

Q Here was an alternative, maybe to increase that, and in conclusion you and Mr. Wilson recommended in the order of desirability one, two and three?

A. Yes.

Q So your first order of desirability at that time, September 10, was to increase the inventory; is that correct?

A. That's correct.

Q You and Mr. Wilson subscribed to that view at that time?

A. We did at that time.

Q In Exhibit 56 of which you and Mr. Wilson were authors, contains this conclusion on Page 5:

"This study has convinced us it is not necessary or desirable to inventory commercial paper. The market has changed in the last five years. Formerly we called an issuer three days in advance and set the maturity, denomination and rate and had the company mail the notes to us."

Now I am skipping through other statements about it including the one I read before about the losses, and the last sentence of the paragraph says:

"By eliminating this out-of-date practice of inventorying, the Commercial Paper Department's profits will be enhanced."

Was that your view at the time this report was submitted to the partnership?

A. Yes, it was.

Q. Was it Mr. Wilson's view?

A. Yes, it was.

Q. Was it your view in early December after you had analyzed the data before you got up this formal report?

A. Yes, it was.

Q. Did you do anything besides submit this report with respect to measures designed to control or lower inventory?

A. When you say report, you mean this Exhibit 56?

Q. Yes.

A. Yes. We started a program --

Q. When?

A. Well, we even started it before we went -- before the study was put together. We were trying it on an experimental basis. So we started this in '69, in I guess it was the fall, September or so, on a limited basis of encouraging issuers to go on a special order tap issue swing-line basis.

Q. Now I think we have come to the point when we had better define some of those terms.

THE COURT: Swing-line basis, tap order?

MR. PIEL: Yes.

A. I might point out that in this study there is a glossary.

THE COURT: Whereabouts, Mr. Van Cleave?

THE WITNESS: In the back, your Honor. However, all the terms aren't there. Some are.

THE COURT: Tap issue is here on Page 96, I see.

Q. It speaks of a virtue that it has but it doesn't tell you how you do it.

THE COURT: All right, tell me what a swing-line credit is. Is that the word, swing-line credit?

THE WITNESS: Swing line.

If I may also say that during the trial and also I know in some of the blue sheets that were presented, you have also heard the term demand line, and since these are one and the same --

THE COURT: Swing line and demand line are the same?

THE WITNESS: Are the same, yes, your Honor. A swing or demand line is a line of credit from a commercial bank that can be used on a day-to-day basis.

THE COURT: With a ceiling, I assume?

THE WITNESS: Yes. For example, if you were trying to sell $10 million worth of paper on a day and you sold five million of it, we were encouraging the issuers to go to the swing line for the other five million, and they would borrow that to the next day. The next day we would offer that five million plus whatever the company would need for sale.

If we sold it, then we would simply pay down the $5 million.

THE COURT: I assume this could be used also as sort of a guarantee of payment of the commercial paper when it came due, or maybe I am misunderstanding something I have heard in this courtroom.

In other words, if you had $100 million worth of commercial paper out and you had $100 million of swing-line credit, would you look upon that as a collateral to the repayment of the commercial paper?

THE WITNESS: Not really, because all bank lines, whether they are swing, demand, regular, straight, they are all on a -- they are all contingent on the financial affairs of the company being in order, and the banks qualify that when they confirm these lines annually.

There is a little disclaimer in there, it says as long as your affairs --

THE COURT: Supposing some $10 million worth of commercial paper falls due on June 4. Couldn't an issuer look to its swing-line credit to pay off the $10 million?

THE WITNESS: Absolutely.

THE COURT: Wasn't that part of what you were talking about in F-4, Mr. Piel, or F-2?

MR. PIEL: No.

THE COURT: One of those F numbers.

MR. PIEL: May I, instead of offering our position on that, ask the witness a question?

THE COURT: All right.

BY MR. PIEL:

Q First, Mr. Van Cleave, if on the maturity of some notes the issuer that had the swing line behind the notes had been planning to roll the notes over, and some public catastrophe happened so the markets were closed that day, or something went sky-high with the rates, nothing has happened to the issuer, the issuer can turn to his banker and ask him to provide the money to pay off the maturity of the maturing note, is that right?

A Yes.

Q But suppose instead of that nothing has happened to the market, no public cataclysm, but an issuer that has paper coming due in the future from day-to-day has suddenly been found to be involved in a great financial scandal and in deep trouble, so it turns to the banker with the swing line and says "Now you are going to pay off that paper under the swing line." What happens?

A. I think those lines will disappear as fast as --

THE COURT: Now give me the question in the middle, Mr. Piel, which is supposing there is no catastrophe on one side and there is no headline in the newspaper about some terrible things that have been going on about a corporation, but their cash position on that date is such that they can't pay it, their cash position may look to be better a week later. Would the swing line be available to pay that?

THE WITNESS: I would say yes.

Q. That would be for the benefit of the corporation, the issuing corporation?

A. Yes.

Q. To meet its needs?

A. Yes.

Q. At a time when the commercial paper market wasn't meeting its needs; is that right?

THE COURT: No, that is not my understanding, Mr. Piel.

A. If the swing line wants to be drawn down, the issuer would call the bank and say, "I want to borrow that $10 million."

Q. You mean if the issuer wants to draw down the swing line?

A. Right. He would call the bank and say "I want to exercise that $10 million line."

He has, assuming that we are talking about the scenario in the middle that you are speaking of, there is no bad knowledge, I would say yes, he has access to that line.

THE COURT: That's all I want to know.

How about that other phrase, tap issue?

THE WITNESS: Tap issue means that -- when we spoke earlier about this lodging of notes with the New York Bank, those notes are there for us to tap. That's how the term comes in, they can merely fill them out and just deliver them to us as opposed to how they used to mail them in.

Q. Or as opposed to your having them in inventory?

A. Yes.

THE COURT: I assume that issue comes through a special order, doesn't it?

THE WITNESS: That's right. A tap issue can become inventory, you know, if you make that decision, you decide to buy it and put it in.

Q. It just really means that the notes pre-signed are in storage at Morgan Guaranty and Morgan Guaranty is authorized to put in an amount and a maturity date according to what Goldman, Sachs is able to move for them on a given day?

A. Correct.

THE COURT: I understand that, but that is controlled by the issuer. That's the issuer's operation?

THE WITNESS: That's right.

MR. PIEL: That's right.

Q. In relation to inventory management, as a tool to aid in inventory management, however, it is a substitute for taking in inventory; is that right?

A. Coupled with the -- yes, and, of course, obviously, coupled with the swing lines, that makes it the complete alternative.

Q. So that to the extent that the amount of money that the issuer wants to be borrowing or wants to have his obligation outstanding for, instead of its being met by your holding an inventory and paying for the financing of that inventory, he is holding it and paying his banker for the use of the swing line; is that right?

MR. STITT: If your Honor please, I object to the leading at this point.

THE COURT: I don't think its leading. I overrule the objection.

Do you want to give me the answer?

A. Yes.

Q. Was there another device or, what shall I say, a measure that you resorted to to get inventories under better control? Did you do something about return inventory on a temporary basis?

A. Yes, we worked return to companies.

Q. Would you explain how that worked?

A. Yes. When -- first of all, the reason for it I think would be helpful. It is that the maturities are fixed on the inventory notes, and if you have -- if you wind up having a forty-day note and somebody wants to buy a thirty-day note, you might not be able to make that sale.

So a method that we had used --

Q. You mean you can't make it out of your inventory?

A. Right, because it is not a note that the investor would like to have.

So a technique that we used, and we used with the Penn Central Transportation, was to, the afternoon before, take a look at what was in position and take a block of, say, five or six million dollars, which I think was about the common amount that we use, and say, "We will arrange and figure on you taking this back from us because it has these fixed dates the next day, but we will commit to be sure that you get the five to six million dollars to pay for that, it is just that we will go out and try to offer any maturity which coincides with the tap issue rather than being locked into the maturity we own."

So that was an effort to try and help the position.

Q. To the extent that you didn't reduce the position, you committed yourself to Penn Central to take back what you had in position and take it in to your inventory overnight?

A. That's correct.

Q. As an accommodation to them?

A. Right, in trying to get the paper sold. Yes.

Q. This was before you persuaded them to put in swing lines; is that right?

A. That's correct.

Q. You pointed out that these various arrangements with commercial banks, and I am still on the matter of the definition of terms that may appear in these documents, swing line and demand line mean the same thing.

A. Yes.

Q. How about stand-by line?

A. A stand-by line, which was very commonplace during this period of time when money was tight, because the banks weren't really that anxious to lend the money if they didn't have to, they had an agreement with the issuing companies that they could have stand-by lines that were there only if they could not sell commercial paper.

So this would be a case of where if they called their bank they wouldn't -- they would have to make a statement to the banker that "I can't roll over my paper. Therefore, I must use my stand-by line."

Q You said that all of those lines were lines that would disappear.

MR. STITT: If your Honor please, I am not sure that was the testimony, and I do object to the leading on this issue.

THE COURT: Sustained.

MR. PIEL: That was what I heard him say. It is preliminary to asking him whether as compared with that, there is something different in an arrangement that is called a revolving credit agreement.

THE WITNESS: Yes, there is.

THE COURT: You are now asking him whether there is a difference between a swing line, a stand-by line and a revolving credit agreement?

MR. PIEL: I am asking him whether there is a difference between a swing line and a stand-by line on the one hand, and a revolving credit agreement on the other hand.

THE COURT: All right.

What is the difference?

THE WITNESS: The difference is the stand-by and the swing and demand line are normally confirmed on an annual basis with this disclaimer that I mentioned to you earlier, and a revolving credit is a signed commitment for X amount of dollars by a number of participating banks, and that does not have that same disclaimer, but there usually are covenants within these revolving credit agreements.

The bank pays a commitment fee for that facility or the issuer pays --

THE COURT: The issuer pays?

THE WITNESS: Yes, there is a commitment fee for that facility.

MR. PIEL: At this time I offer in evidence Defendants' Exhibits BW and BZ, BW being a cover letter for BZ, the cover letter being from J.H. Shaffer, Treasurer of Penn Central Transportation Company of an officer of the First National Bank of Chicago and BZ -- dated, excuse me, February 5, 1970, and BZ being a letter of February 5, 1970, a letter agreement signed by Mr. Shaffer and the First National Bank officer.

I am informed by the pretrial order that there is no objection to the admission of these documents.

MR. STITT: Your Honor, these are copies of the documents which we made no objection.

THE COURT: All right.

xxx (Defendants' Exhibit BW was received in evidence.)

xxx (Defendants' Exhibit BZ was received in evidence.)

Q Do you have copies before you?

A. Yes.

Q You will see that the covering letter refers to the enclosed letter of agreement as being a swing line.

A. Yes.

Q If you will turn to BZ which is the enclosed swing line agreement entered into by the way on the same day as that blue sheet of February 5, you will see the last paragraph on the first page reads, "This agreement may be terminated at any time by either of us by written notice to the other, but such termination shall not affect our liabilities to you theretofore incurred hereunder."

Is that typical of the swing line arrangement?

A. Yes.

Q I show you Defendants' Exhibit BM for identification.

xxx (Defendants' Exhibit BM was marked for identification.)

Q I draw your attention, in the interest of saving time, to the addressee to and from and the additional names to receive copies as indicated by the initials on the second page.

Can you tell us what this document is?

A. Yes. This is a list of finance company issuers --

Q Before you describe the contents, was it a communication that was made?

A. Yes, it was made to Doty from Wilson, and I received a copy.

Q Did you receive a copy?

A. I did.

Q At or about the time of its date?

A. Yes.

MR. PIEL: I offer it in evidence.

MR. STITT: No objection.

xxx (Defendants' Exhibit BM was received in evidence.)

Q Calling your attention to the fact that this appears to state that the Commercial Paper Department is setting new internal guidelines with limits suggested as appropriate maximums at which to keep your inventory of certain issuers named, these are all finance companies, are they?

A That's correct.

Q Did you have a similar list for other issuers?

A. Well, in addition to the finance companies which are in the market constantly, as we spoke of earlier, we did have several industrial companies that we also had --

Q. Let's stick with the finance companies for a moment. We will come to those.

Who was in charge of managing inventory and determining the amount that would be there and the amount that would be taken into inventory? Was that essentially you in charge of the operation?

A. Yes, it was me.

Q. You had the real responsibility for managing that?

A. That's correct.

Q. Did you stay within these limits that were set by this memorandum?

A. These are, as you said -- as they state here, they are internal guidelines. I stayed pretty much within those guidelines. If I had to exceed those, why, I would touch base with Wilson or Doty and talk about it.

Q. When you say you had to, you mean if you wanted to, to help the issuer?

A. Yes. There is a special -- you know, if we went along for a week to ten-day period and we weren't able to sell what we had or sell what they had available, why, for a few days we would probably take some in and probably try to sell it out to work with them.

Q. Was the result of setting these limits with these issuers, however, to require them to fill out their variable needs from day-to-day by going to bank lines?

A. Yes, it was one of the attempts and one of the first attempts we were making to get issuers to go to this tap issue-swing line concept. We felt that a natural place to start would be the finance companies because they were constantly in the market, there was no seasonality involved. We just thought this was a logical place to start.

Q. Going back to the swing lines for a moment, I did want to ask you what, if you know, according to your recollection of this, would be the normal or typical arrangement by which the issuing company would pay the bank compensation for establishing a swing line.

A. It was done on a compensating balance arrangement.

Q. Would that be the typical way?

A. That would be the typical way, yes, to my knowledge.

Q. In other words, that, in effect, would tie up funds of the issuer in the bank, adding to the bank's general balances, and requiring the issuer not to draw on them?

A. Yes, the plus, if I may add, on the bank's side of this was that their hope was that they would set up their swing line, get the compensating balance and they would never have to loan the money. That was really what they wanted to do, so they wanted the commercial paper effort to be successful.

Q. You said there were also a number of other companies that were in the situation of the finance companies.

Did you mean by that that they weren't marked by seasonality of their demand?

A. That's right. They were in the market pretty consistently.

Q. What did you do about them?

A. There were a few, a couple that we set internal guidelines on, one was the Penn Central Transportation Company, which we established a five million guideline on which was exceeded, just as some of these finance companies were, from time to time. Then also Avco Corporation, I don't remember the exact numbers there, but that was another company that was in all the time.

Q. What about other companies?

A. United Merchants with the Robert Hall Stores and Borg, Warner Corporation were two others.

Q. Were there other companies that went right along with your requests to establish swing lines and reduce your inventory?

A. Yes, there were some that immediately followed our advice and some that it took the concept of setting an internal guideline and said, "Look, we are just not going to take any more until we sell more." We just had to press them a little bit more than we did the others.

Q Apart from limits set in the way that you described now, did you in addition inform issuers from day-to-day that you could not or would not inventory additional paper which the issuer wanted to sell to you?

A. Yes.

Q Did this happen on more than one occasion?

A. Yes.

Q How often?

A. It is difficult to say. Maybe daily one issuer, or so. But I can't put a number on it.

MR. PIEL: Now, may we have Defendants' Exhibit EW for identification?

Q. I show you that, Mr. Van Cleave.

THE COURT: What number are you referring to, Mr. Piel?

MR. PIEL: I am now referring to EW for identification, which appears to be a blue sheet regarding Avco Corporation.

Q. Is that right?

A. That's correct.

Q What was Avco Corporation?

A Avco Corporation was a conglomerate, really. They owned a finance company, they were involved in aviation, in broadcasting, and they also owned Carte Blanche, the credit card operation, Paul Revere Insurance Company.

Q Was this blue sheet done in the regular course of the operations of the Commercial Paper Department?

A Yes.

Q And it refers to a meeting between Mr. Wilson, Lou Drypolcher -- who is he?

A He was the liaison man with our new businessmen in the Corporate Finance Department.

Q Who is Walter Fekula?

A He was a credit man in charge of the -- assigned to the Avco account.

Q One of the men under Mr. Vogel?

A Yes.

MR. PIEL: I offer it in evidence.

THE COURT: For what purpose?

MR. PIEL: To show the practice of Goldman, Sachs in getting issuers to get their inventory under control and their statements to issuers in that regard, to show that contrary to the contention of plaintiff here the efforts made to get Penn Central to reduce its inventory positions was consistent with what they were trying to do generally and not done because, as plaintiff claims, they were running away from a credit risk.

THE COURT: What they may have done regarding Avco is no proof as to what you did with regard to Penn Central. Objection sustained.

Is this a good time to stop?

MR. PIEL: I might just complete this point with the offer of one more exhibit, and if Mr. Stitt objects, we will exclude. I would like to make the record.

THE COURT: All right.

Q. I show you Exhibit EV for identification, a blue sheet of July 22, 1969 regarding Avco Corporation referring to setting up a swing line arrangement, et cetera, and referring to the taking back by the issuer.

I ask you if that document was made in the regular course of business and put in the Avco file?

A. Yes, it was.

MR. PIEL: Offered in evidence.

MR. STITT: My objection would be the same as the grounds for which the Court excluded the previous exhibit.

THE COURT: Objection sustained.

MR. PIEL: Thank you, your Honor.

THE COURT: All right, Mr. Van Cleave, you are excused until tomorrow morning at 10:00 o'clock.

How much more do you have with this witness, Mr. Piel?

MR. PIEL: I think I wouldn't take the morning with him, your Honor, I hope.

THE COURT: How long will your cross examination take?

MR. PIEL: I would say a substantial amount of the morning.

MR. STITT: I would say at least a couple of hours on cross examination, your Honor.

I understand that Mr. Doty would be next. I was wondering if my adversary could give me the witness after Mr. Doty so I could work ahead.

THE COURT: The witness after Mr. Doty, I assume, is going to be your witness Mr. Kaufman.

MR. STITT: Unless I decide, your Honor, that we can dispense with him, but I will be in a position to make that decision --

THE COURT: I would say tomorrow you would have Mr. Doty at least start.

MR. PIEL: That's the hope.

THE COURT: What Mr. Stitt wants to know is if you finish with Mr. Doty and he doesn't call Mr. Kaufman, who is your next witness?

MR. PIEL: Your Honor, could we possibly be spared Friday morning? Mr. Doty is a trustee of Fordham University which is having its commencement on Friday morning --

THE COURT: If it's a question of Columbia University, I understand his position and I will grant the disposition on Friday.

Could you have some other witness available?

MR. PIEL: Yes, it would be a witness we would start and interrupt to put Mr. Doty on.

THE COURT: I don't mind. That is perfectly satisfactory to me.

MR. PIEL: Also we will have our motions. Well, possibly Mr. Kaufman and in any case some motions to address to your Honor.

THE COURT: All I am saying is that I have no objection to suspending Mr. Doty's testimony in the middle so that he may attend to other things on Friday morning. But, I think you ought to have other witnesses available to pick up the slack.

MR. PIEL: We will, your Honor.

MR. STITT: I was inquiring into the identity of these other witnesses following Mr. Doty or prior to

Mr. Doty, if we should not finish with Mr. Van Cleave tomorrow.

MR. PIEL: Following Mr. Doty or sandwiched in Mr. Doty will be Mr. Vogel, the head of the Credit Department.

THE COURT: Mr. Piel, could you give me any indication of when you expect you would be finished? Maybe I can schedule another trial next week, if you are going to be finished.

MR. PIEL: After Mr. Vogel, we have three more witnesses, your Honor, and I think they will take two full days.

THE COURT: In other words, it looks as though we would go at least through Tuesday?

MR. PIEL: Yes, your Honor, maybe Wednesday. I should say not Thursday.

THE COURT: I don't hold you to it. I just want to get some idea.

MR. PIEL: I think that is my best feel for it.

THE COURT: Thank you.

(Court adjourned to Thursday, June 5, 1975, at 10:00 a.m.)

LHd

FRANKLIN SAVINGS BANK OF NEW YORK

v.

GUSTAVE L. LEVY, et al.,

71 Civ. 882

June 5, 1975
10:00 a.m.

(Trial resumed.)

MR. STITT: As a preliminary matter, your Honor, Mr. Piel and I have agreed that Exhibit 63-F now be laid to rest as follows: we have a traced copy from the original, and we are taking the tag labeled Exhibit F-63 and changing it to the traced copy with a copy of the original product and asking that it be received in this form as Exhibit F-63.

THE COURT: All right.

(Plaintiff's Exhibit F-63 was received in evidence.)

THE COURT: Now that you have given me this, frankly, I don't know where it comes from.

MR. STITT: These are notes, your Honor, December 9, 1969, by Mr. Lepley of Penn Central with reference to a meeting that he attended on that date with respresentatives of Goldman, Sachs & Co. The references in the document are to 80 percent bank line coverage is typical and that many issuers have 100 percent.

THE COURT: Conference with Shaffer?

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MR. STITT: A conference with representatives of Goldman, Sachs and Penn Central representatives on December 9, 1969, and one of those who was there was Mr. Lepley, and those are contemporaneous notes.

MR. PIEL: Your Honor, he is referring to the conference that is reflected in Plaintiff's Exhibit F-9, a blue sheet by Mr. Van Cleave, which we will be coming to.

THE COURT: You may proceed.

GEORGE MOTEN VAN CLEAVE, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. PIEL:

Q I show you, Mr. Van Cleave, Defendants' Exhibit CW for identification.

MR. PIEL: If your Honor please, this is a computer run summary derived by appropriate programming instructions to the computer from the same data that is arrayed in Defendants' Exhibit CU in evidence, plus on the right-hand side under the heading "All CP," all commercial paper, a statement of the total amount of paper outstanding in the market that was sold by Goldman, Sachs as of that date, that is outstanding on that date, previously sold by Goldman, Sachus, in the next olumn the amount of maturities, in other words, notes, we will call them Goldman, Sachs issuers, falling due that day and which would either have to be paid off or refinanced by rolling over notes.

In the last column in thousands is the amount of Goldman, Sachs inventory of the paepr of all issuers. That columnneeds a mechanical correction. Under the word "inventory" we should have "($000)." It is really 129,600,000.

THE COURT: The figure is 3,516,000,000?

MR. PIEL: That is correct. This document has been acknowledged by Mr. Stitt, who examined the underlying materials and procedures, as being authentic and accurate. However, he has trouble with one of the columns, he says, and that is the column called RTC, Return to Company. I believe that by questioning Mr. Van Cleave about what these headings are, we can dispel Mr. Stitt's unhappiness, and so I will do that, if your Honor please, as a basis for offering it.

MR. STITT: Your Honor, perhaps I might make a statement that would expedite matters. It is true that I did have access one morning to a host of materials from Goldman, Sachs. I have no objection based on the material that was used to prepare this. I was troubled by the offer all inclusive category RTC, Return to Company, but I think at this stage of the record that my concern was perhaps overly cautious, and I would have no objection to the receipt of this document.

MR. PIEL: Thank you.

(Defendants' Exhibit CW was received in evidence.)

THE COURT: You may proceed.

BY MR. PIEL:

Q Will you please explain to the Court what these columns do show us?

A Yes. Starting from the left-hand side, issuer date --

Q First of all, from issuer date over to the word "buy-back," does that all refer to Penn Central commercial paper?

A Yes, that is correct.

Q Now, take the columns.

THE COURT: Wait a second. This heading seems to indicate all commercial paper. You say it refers only to Penn Central?

MR. PIEL: Yes, your Honor. The first nine columns refer only to Penn Central, except, of course, the date column, the first column, is read all the way across and applies also to all CP. It would have been neater if we had put that word "Penn Central" over it the way it says CP on the right, but that is the case.

THE COURT: I have written it in.

A The first column being the issuer date, which I think is self-explanatory.

Q Issuer date, I think.

A Mine reads issuer date. Maybe it is incorrect.

Q It is the date of the issuance of the notes sold that day, is that right?

A Correct. The first column being the oustandings, which would be the total outstandings of Penn Central Transportation on that day.

Q So on January 1, 1969, the whole $100,000, which at that point had been authorized by the ICC, was outstanding?

THE COURT: It looks like 1,000,000 to me.

THE WITNESS: 100,000,000, yes.

THE COURT: I am impressed by those zeros. The reason I say that is that years ago when I had the TWA-Howard Hughes case, your confrere, Judge Bromley, who represented, I think, the banks, kept dropping the three zeros, making it 500,000 instead of 500,000,000, and when I corrected him he said he can't understand anything over 500,000, and that's why he consistently dropped the last three zeros.

MR. PIEL: We do have the letter M in there, and I overlooked that..

Q All right.

A The next column is the Inventory, which means the total amount of Penn Central in Goldman, Sachs & Company's inventory on that day.

Q At the close of business on that day?

A That's correct. Purchases would be the total amount purchased from Penn Central on that day.

Q By Goldman, Sachs?

A By Goldman, Sachs, yes.

RTC is the Return to Company column that we have spoken of earlier, and that means paper that we returned to the company from our inventory position.

Q That might be pursuant to the arrangement that you described yesterday where you asked them to take it back in the morning so that you could draw on appropriate maturities and then you agreed to reposition it at the end of the day?

A That would include that.

Q It might include returning a note to them to substitute it for a different maturity, would it include that?

A Yes.

Q It would also include those two occasions in the evidence when they took paper back to reduce your inventory, is that also in there?

MR. STITT: Your Honor, I do object to the leading.

A Yes, the Return to Company column includes the items that I spoke of yesterday where we returned to change maturities --

Q We will come to that.

THE COURT: Let me understand one thing. Under the heading "Outstanding," that is the amount of commercial paper that Penn Central had outstanding?

THE WITNESS: That's correct.

THE COURT: Of which you had $1,300,000 in inventory?

THE WITNESS: Yes, your Honor.

MR. PIEL: In inventory at the end of the day.

THE COURT: That's right.

Q The rest of it you had sold to investors on previous days, is that correct?

A That's correct. Are we cleared upon the REturn to Company column?

Q For the time being.

A Prepays are items that are prepaid by the Penn Central Transportation Company directly to an investor. If the investor would need his money ahead of time, he might ask us if he could get his money, and some times we are able to just prepay his note early.

The next item, COLL means collections, and that would be commercial paper, Penn Central Transportation paper in Goldman, Sachs & Company's inventory that matured, so therefore we presented it for collection upon maturity.

Sales, also Penn Central Transportation Company sales for that day to investors by Goldman, Sachs.

Buy-back column would be paper in which we bought back from investors who needed their money ahead of time, as opposed to the prepay, where we bought it back from the investors and either resold it or put it into our inventory.

The final three columns represent figures of all commercial paper on the dates to the left-hand side. The Outstanding column, for example, gives the total outstanding commercial paper that Goldman, Sachs has sold.

THE COURT: That Goldman, Sachs has sold?

THE WITNESS: That's misleading. Has sold or has in their inventory. Total amount of paper outstanding for the issuer.

THE COURT: For all issuers?

THE WITNESS: Right.

Q In other words, if I may interject there, in the first line for January 1, the 3,516,368,000 figure would include the 129,600,000 in the right-hand column?

A That's correct.

Q And the balance of it would be paper of all

Goldman, Sachs issuers, if I may use that term, which Goldman, Sachs had previously sold to investors and which was still outstanding?

A That's correct. The Maturities would be the total amount of commercial paper maturing on that day of all issuers and the Inventory would be the total inventory of all commercial paper held by Goldman, Sachs.

THE COURT: Do I understand that you had an arrangement with the Penn Central that you were the sole distributor of commercial paper?

THE WITNESS: That's correct. That is commonplace in the trade, your Honor. 95 percent of all commercial paper is sold on an exclusive basis.

Q Would you tell the Court one reason for that?

A The simplest reason for that?

THE COURT: To knock off competition.

MR. PIEL: There is a simpler reason.

THE COURT: Even than that?

MR. PIEL: You can't have two dealers managing the problems of maturities and outstandings.

Q Is that right?

A That's correct.

MR. STITT: If your Honor please, I object to the leading. The question has been answered. I am just not fast enough.

THE COURT: It happens to be my question, really, for my information. Go ahead.

MR. PIEL: May I just briefly call the Court's attention in connection with evidence to be hereafter heard, to a couple of things that appear on the face of this document which your Honor has there. First of all, your Honor noted in Exhibit CT, the statistics on the short-term money market, that there was a continuous and rather rapid increase not only in the total short-term money market in the United States, but particularly in the commercial sector of it.

If your Honor turns the pages of this document, under the column "All Commercial Paper Outstanding," your Honor would see that in the period between January 1, 1969 and the end of the period covered by this run, which is June 19, 1970, Goldman, Sachs' share of that total market had grown from three and a half million in the beginning of 1969 to approximately six million at the end of that period.

Your Honor noted that in the blue book study, which was Exhibit 56, they were at that time talking about how they could manage an increase from five to six. Well, their prediction that they would get the six, they got the six by June, 1970.

The other thing is that along with, as you turn the pages, along with that increase, you will see an increase and a build-up of Goldman, Sachs' inventory. You will see that the volume of outstandings put pressure also on the inventory, and that it went up over their limit of 250,000,000, many, many times, which according to Mr. Van Cleave's testimony, he had to get special permission from the management committee to go over that limit.

MR. STITT: Your Honor, is this a question that's being put to the witness?

THE COURT: He is refreshing my recollection as to what appears in exhibits already in evidence.

MR. PIEL: Mr. Van Cleave testified yesterday to the efforts made toward the end of '69 and the beginning of 1970 to get issuers to get their inventory down, and the result of that is also shown on this chart, because while the oustandings after April stayed up around $6,000,000,000 at all times, the inventory started dropping. It dropped down to as low at one point along in here as 160,000,000, whereas it had been up around 300,000,000. That's the last column as you turn the pages, over on Page 34 --

THE COURT: You have wide swings in here. For example, on Page 32, on May 13th it was only 170,000,000, not much over what it was in the beginning of theperiod on January 2, 1969, and two days later it is up to 346,000,000.

It doubles in two days. I have not gone through this too carefully.

Q Do you have any comment on that, Mr. Van Cleave?

A I am sorry, I don't see that.

THE COURT: Page 32, May 13th. I am sorry, forget it. I was reading the wrong column.

THE WITNESS: Maturities, probably.

MR. PIEL: The right-hand column is the inventory. You are now down under 200 whereas they were up around 300.

Q Mr. Van Cleave, what is your inventory today?

A When I left the office it was 40,000,000 today.

Q What are your outstandings today?

A Seven million one.

THE COURT: This is five years later.

MR. PIEL: IT is the end of the story in getting the inventory down.

MR. STITT: I do question the relevance of it.

MR. PIEL: All right, I am through with that.

Q You described yesterday several steps that were taken in the endeavor to get issuers to cooperate in limiting your inventory position.

Were any of those steps taken with respect to Penn Central?

A Yes, they were.

Q What was done?

A Well, I encouraged the buyers, and in this case this was Roger Lynch, to continually press the day-to-day people, and that was primarily Lepley, that he was dealing with to continue to talk about swinglines and to help us alleviate our financing their position.

I also talked to Bob Wilson and told him he should keep talking to Jonathan O'Herron about that. Then in fact myself, I even discussed it with several representatives of the railroad.

Q Did you at one point have a meeting with representatives of the railroad to discuss the matter?

A Yes.

Q I show you Exhibit A for identification, the credit file; I ask you, did you make a memorandum of your meeting?

A Yes, I did.

Q Was the memorandum put in the credit file?

A A blue sheet memorandum, yes, I believe it was.

Q Would you look under date of December 9th?

A Yes, I have it.

Q Is this your memorandum?

A Yes.

MR. PIEL: Your Honor, this is the page that was previously marked in evidence as Plaintiff's Exhibit P-9.

Q Does this correctly record your recollection at that time of what had gone on at this meeting?

A Yes, it does.

Q Do you have any further recollection of anything else that happened at the meeting at this time?

A No, I don't.

Q I draw your attention to one sentence in that which, if I may, I will read, your Honor, down toward the end, about the third sentence from the bottom, where it says, "J. A. Vogel brought up the subject of line coverage, pointing out that there are now investors that will not buy commercial paper unless there is 100 percent coverage, and that although we do not feel 100 percent coverage is necessary, questions are being asked in this regard."

Do you recall that part of the discussion?

A Yes, I do.

Q Will you explain what was the case with regard to investors wanting to see 100 percent line coverage while Goldman, Sachs did not feel it was necessary?

A Well, in this particular case there was a lot of adverse publicity around that period of time. It was a bad winter and there was quite a bit of delay in the railroads, on the railroad, and people were just seeing a lot of bad publicity. So one of the first things that they think about, a number of investors, is 100 percent coverage, whereas they don't formally think of that during periods of ease and everything is going along okay and there is no adverse publicity. So this brought up the question of our seeing a possibility of the sales decreasing and that they ought to have more lines to take care of that.

Q What is the point that Goldman, Sachs does not feel it is necessary?

A All issuers do not have a 100 percent line coverage and in a $6,000,000,000 company we did not feel from the standpoint of all this information that they definitely needed it, but we didn't know. We just couldn't be sure that there wouldn't be some kind of a run-off.

Q By a run-off, you mean what?

A Run-off in outstandings, that the sales would decline.

Q You mean a decline in investor interest or willingness to buy?

A Yes.

Q Did that have any bearing on whether or not it was credit-worthy?

A No.

MR. STITT: Objection to the form of that question.

THE COURT: Overruled.

Q I am not sure you have identified Mr. Lepley. WE have referred to him as an officer of the railroad. What was his function, insofar as you were concerned?

A He was in charge of the day-to-day mechanics in arranging the paper sales with the railroad, and his conversations for the most part took place with Roger Lynch.

Q Did you occasionally also talk to him?

A Yes, because during this time when there was so much activity, quite often I would substitute for one of the buyers in transmitting by telephone the information to the issuer.

Q There you were referring to issuers in general, are you?

A Yes.

Q Did Mr. Lepley and the other -- this memorandum says on December 9th that Bob Loder, Assistant Vice-president of Investments, was there also, and Ted Verlander, Director of Corporate Financing, they also were representing the railroad?

A That's right.

Q Did they say "fine, we will do it right away," or what was their position?

A They had to go back and discuss it with Jonathan O'Herron who was the man that would make this decision.

Q Were they generally resisting the idea of going over to swinglines?

A They at that particular time seemed to think it made sense, but I am not so sure that they were convinced, but they obviously had an out by O'Herron if they didn't want to do it. But I thought that they felt that it was probably a good thing to do.

Q What was the reason for not going right along with it, as you understood it? What was their reason for not going right along?

MR. STITT: If your Honor please, I believe that calls for a conclusion. I have no objection if the question calls for what was stated by the Penn Central officials to this witness, but I don't believe he should conclude --

MR. PIEL: Let me clarify my question. I want this witness' understanding of where he stood with them at that time. His motives are under question by your case, Mr. Stitt.

Q I ask you, in dealing with these men, what was your understanding of why they didn't immediately do what you asked them to do?

A It boils down to costs. They had a good deal. We were financing their position in the unsold paper, we were borrowing on it and taking losses on it, and so that was fine.

Rather than going out and getting more bank lines and paying the compensating balances and additional costs, why, they decided, "Let's just leave things as they are and let Goldman, Sachs do it."

Q Did they do anything in December to respond favorably to your request for help in getting your inventory down?

A Yes. In late December, I think it was around Christmas time, in fact, after a financing they took back approximately 15 or 16,000,000, if my memory is right.

Q Will you refer to Exhibit CW and see if you can find the date when they did that in CW?

A Yes, on December 23rd, on Page 23, we returned 16,170,000.

Q That left your inventory at that time at -- what?

A 50,000.

Q The next day your inventory was what?

A 50,000.

Q No, on the day following, on December 26th.

A It moved up to 4,050,000.

Q Referring to Exhibit CW to assist your answer, if it does assist your answer, what was your experience then with the inventory of Penn Central during the month of

January, 1970?

A As you can see, and I think also important in here to look at is the outstanding figure which went down to the 183 level from the 2,000,000 level. As we moved into January, you can see that the inventory position, particularly around the 7th or 8th of the month, Page 24 --

Q You are now on Page 24?

A 24, yes. Up until that time the inventory kind of stayed in the 2 to $4,000,000 range. But then the transportation company wanted us to get those outstandings back up to where they were before they took the paper back, so therefore, additional amounts became available for us to sell, and, as you can see, their market wouldn't absorb it, and the inventory then started to build from the 2 to $4,000,000 range on January 7th all the way up to 18,000,000 very quickly on the 12th. This casued us to again point out to them that they ought to get swinglines and operate on that basis so that we wouldn't have to finance their position.

As you can see, it went pretty much at that level all the way to February.

Q Varying between 14 and 17?

A Until early February.

Q Please show the witness Exhibit F-95 in evidence, that's the top ten list.

You described for us yesterday the top ten. Did you at my request before court this morning review Exhibit F-95, the top ten sheets for January?

A Yes, we did.

Q What did you find as to how often Penn Central was on that list during the month of January?

A It was on every business day, with the exception of two, I believe.

Q How often was it number one?

A Probably half the time.

Q You say probably. Did you find --

A About half the time.

Q Did you find that from examining the sheets?

A From looking at the sheets, yes.

Q So that during the month of January, it was one of the worst inventory problems, is that correct, from your point of view?

A That's correct.

Q Were there any further efforts made to get Penn Central to reduce the inventory?

A Yes. In February, after the year-end figures were announced, Bob Wilson told Jonathan O'Herron that he ought to take some of this paper back because we were not sure how the sales were going to go after that announcement, and on February 9th, Page 26, you will see --

Q Of Exhibit CW?

A Of CW, you will see that they took back $10,000,000 worth of paper from our inventory.

THE COURT: February what?

THE WITNESS: February 9, 1970, Page 26.

Q Were you present at Mr. Wilson's discussion with Mr. O'Herron that led to their taking back 10,000,000?

A I was not.

Q Did you learn about it subsequently?

A Yes, Mr. Wilson told me.

Q Did that result in any advice or instructions to you regarding inventory management?

A Yes, that's correct.

Q What was that?

A As I testified earlier, we had a $5,000,000 line as to the inventory position.

Q Again by reference to Exhibit CW, were you able to maintain that guideline ceiling?

Q For the most part yes, but there were times when it was exceeded. As you can see, as you look down after February 9th, you will see it was five million nine on the 14th and 15th and went up to 9,000,000 on March 2nd.

Q On this question of inventory, the time period extends beyond the 16th, so will you follow what happened in April regarding the inventory position?

A As you can see, in March and then again in April -- in March it kind of stayed within that guideline, exceeding it just a bit at the end of the month, March 30th and 31st. Then there was another build-up over the guideline on April 1st and April 2nd.

Q Meanwhile, what was the outstanding level? Did it go down or did it stay about the same during all that period?

A Well, as you can see, it moved from -- it went from 187 to 195, it stayed in the high 180's and low 190's through that March and April period, and actually moved up from the return at the end of the year.

Q Let's take the date of the transaction in this case, March 16, 1970, on Page 28. That showed that on that date the outstandings were 194,575,000.

A Correct.

Q You had 4,500,000 in inventory?

A Yes, that's correct.

Q So that meant that under their target amount of having 200,000,000 of credit outstanding in this market, they were short 3,000,000. Where was that 3,000,000?

A They had begun to use the swinglines.

THE COURT: I don't follow that.

Q Explain that further.

A On February 16, 1970 there is 194,000,000 --

THE COURT: I thought you were on March 16th.

THE WITNESS: I beg your pardon, that's my error. March 16th.

MR. PIEL: I think I did the wrong arithmetic, your Honor.

THE COURT: I think you did.

MR. PIEL: The amount in inventory is part of the outstanding, therefore, the shortage was five and a half. The shortage is five and a half, not three?

A That's correct.

Q Where was that?

A That was being borrowed in the swinglines.

Q So now the difference between their objectives and what they would have in the hands of investors was being financed by them and not by you?

A That's right.

Q Except to the extent that you had inventory?

A Yes, we did have some.

Q What accounted for the swings in the amount of your inventory during this period?

A Well, of course, as we had sales, why, that would reduce the amount that was in inventory. As you can see, there was some build-up in March, late March and early April, and as you look to the sales, the sales were slower during that period of time.

Q Then in April there is an improvement from the point of view of your inventory burden from the 1st of April, your inventory declined to three and a half million by the 7th and then it went to zero?

A That's correct.

Q The outstandings remained approximately the same then and thereafter, did they not, according to CW?

A That's right. They remained the same all the way up until the end of April.

Q Although the oustandings remained the same, you were able to get on without inventory. What accounted for that?

A We finally drove it home that this was the way to run a program, and that working with us against the sales that we would get and also doing the borrowing from the banks for the difference, that was the way to run a program, and there are the results.

THE COURT: On that March 16th date, Page 28, you have purchases, nine and a half million. Does that mean you purchased from Penn Central?

THE WITNESS: Yes.

MR. PIEL: By Goldman, Sachs.

THE COURT: Wouldn't that take you over their 200,000,000 figure?

THE WITNESS: No, because what is missing in this exhibit is there was no doubt about that same amount maturing on that day.

MR. PIEL: Exhibit CU has a column showing the maturities, your Honor.

THE COURT: So they came out with nine and a half million on that day and you sold 9,700,000?

THE WITNESS: Right, 200 obviously is from the inventory.

Q Do you recall whether or not near the beginning of March you had another talk with Mr. Lepley about the inventory problem?

A That's correct. I had a conversation with him about --

Q Do you remember when it was?

A I don't. It was some time in early March.

Q Will you look at the credit file, Exhibit A for identification, and see if that -- by that you can fix the date?

A March 5, 1970. I have it.

Q Is that a blue sheet memorandum by you?

A Yes.

MR. PIEL: If your Honor please, that page from the credit file has been admitted as Plaintiff's Exhibit F-10.

Q Is that a correct account of your recollection of your discussions as of that time?

A Yes.

Q Do you remember anything more about it in addition to what is here?

A No.

Q There is a reference, the second sentence says, "Our understanding from R. G. Wilson was that they would use their swinglines for up to 10,000,000, and when they were filled we would inventory up to 5,000,000."

Did they by this time have swing lines then?

A Yes, they did.

Q Then you next said, two sentences after that, "I explained that what we had learned from Lepley, stating that this was not a problem at this time, as we were selling well, 2,000,000 in inventory, 3,000,000 open in swing lines, but I wanted to straighten this out for the record."

By reference to CW, how do you -- can you see from CW that you were selling well?

A You are going to have to repeat that question for me.

Q I am trying to find a reflection with your aid in CW to the statement that you were selling well, meaning the notes of Penn Central were selling well, is that right?

A That's correct. Yes, the notes were selling well, as you can see outstanding on the 5th they were 188 and moved to 185 on the 6th, held that level for several days, went down to --

Q That's shown, then, by the level of outstanding, is that right?

A Yes. And also, I think, by the level of inventory. We were below the guideline.

Q The inventory being down?

A Yes.

Q Then the second paragraph of Exhibit F-10, that memorandum that you are looking at in the credit file, "O'Herron asked J. A. Vogel to talk to John Shaffer" -- who was John Shaffer?

A He was Treasurer of Penn Central Transportation Company.

Q "About his question." That would be Vogel's question?

A Yes.

Q "On the additional 50,000,000 in bank credit just arranged and the documentation necessary to it. In his telephone conversation with Shaffer, J. A. Vogel learned that the 50,000,000 in bank credit was under a loan agreement with the Chemical Bank as the lead balance, and we will receive a copy of that early next week."

That $50,000,000 credit arranged at that time by the railroad with a group of banks led by Chemical, was that the same as the swing lines or in addition to the swing lines?

A That was in addition to.

Q Did you at any time in this period tell Mr. Lepley that you would not inventory paper any longer?

A No.

Q Did you decide at any time in March or April that you would no longer inventory Penn Central paper?

MR. STITT: He is speaking of this wintess personally?

MR. PILL: Let's start with that to be clear.

A No.

Q Did you?

A No.

Q Did Goldman, Sachs?

A No. Not to my knowledge.

MR. PIEL: Thank you.

Your witness, Mr. Stitt.

CROSS-EXAMINATION

BY MR. STITT:

Q Mr. Van Cleave, first I am going to ask your help in tying up what may be some loose ends on the subject of jurisdiction.

You testified about the commercial department's typical day, did you not?

A Commercial paper department, yes.

Q I believe you testified that this typical day actually began on the afternoon of the prior business day? Is that true?

A Right. In getting prepared for the following sales day.

Q In particular you made reference to a conference call on that preceding afternoon?

A That's correct.

Q This is a conference call that involves not only the New York office of Goldman, Sachs, but its other offices in other states throughout the country?

A Correct.

Q And this is done as a regular matter of the course of your commercial paper sales effort?

A That's correct. If I may add one thing, not all our offices had commercial paper sales offices, so therefore one couldn't conclude that anywhere we had an office that that conference call was reached.

Q How many offices would have been involved in these calls, say, on March 13, 1970?

A Boston, Chicago, St. Louis and Los Angeles.

Q Who would participate in the conference call?

A The buyers of paper would conduct the call, and there was also a person that we called a coordinator, not to be confused with my title of coordinator in the organization chart, but we really gave him that name, and he acted as liaison between the salesmen in the regional office and the buyers in New York.

Q What was his name?

A Robert Stackpole.

Q Where was he located?

A Right with the commercial paper buyers.

Q Was he in New York?

A New York.

Q Did you participate in these calls?

A Yes. I attended the calls. I didn't always participate.

Q Did Mr. Wilson participate?

A Seldom, if ever.

Q Did Mr. Robert Kaufman participate in these calls?

A He would be in the call taking down the information, just as one of the regional salesmen would be on the other end of the telephone.

Q There would be a speaker hookup so he could hear?

A Right, and all the New York salesmen would be in this call.

Q That would have been true on March 13, 1970?

A Yes.

Q You made reference on your direct testimony to a top ten list of inventory positions, which I take it is the highest in terms of amount in your inventory?

A Amount per issuer.

Q And you testified, I believe, that Penn Central was on thatlist regularly during the month of January?

A Yes.

Q And was that also true in February, at least the early part?

A I can't recall.

Q Could you refer to that exhibit and give us that information?

(Pause.)

Q You mentioned January. I now just direct your attention to early February, say dates of February 1st to 5th, that period.

A Three out of the five days it was in the top ten.

Q What dates, can you give us those?

A February 2nd --

THE COURT: Is that the first day?

THE WITNESS: Yes. I am assuming that January 30 was a Friday.

Q It was on the top ten on that day?

THE COURT: Wait, wait. He is asking you a question.

THE WITNESS: I go from 1/30 to 2/2. I assume that was a Friday. February 2nd, assuming that's the first business day, it was on the top ten February 2nd.

MR. STITT: I think we can take judicial notice that February 2, 1970 was a Monday, your Honor.

Q Do you find any other dates during that period? To save time, Mr. Van Cleave, would you turn to the page for March 13, 1970. Was Penn Central on the top ten list on that date?

A March 13th?

Q March 13th.

A Now we are in March. Yes.

MR. PIEL: Ninth on the list?

THE WITNESS: It was number nine. It is interesting to note, if I may --

Q You do find it on the list for that day?

A Yes.

Q So it would have been one of the names that would have been called to the attention of those participating in the conference call on that date, Friday, March 13, 1970?

A That's correct. Telling them that there was four million seven.

Q Do you also discuss the paper that can be sold on a special order basis as well as those appearing on the top ten list during these conference calls?

A Yes.

Q On Friday, March 13th, was Penn Central Transportation paper available on a special order basis?

A I do not recall.

Q Didn't you testify on direct examination that on March 16th, the sale that is in issue in this lawsuit, that the paper bought by Franklin on that date was on a special order basis?

A Yes, but you just asked me about March 13th. March 16th it was available for sale. I don't know whether it was available for sale on the 13th.

Q If it was available for special order on the 16th, would it have been normal course to have that mentioned during the conference call on March 13th?

A For delivery on the 16th, yes. I might qualify that--

Q You have answered the question, Mr. Van Cleave.

THE COURT: Wait a second.

MR. STITT: I am sorry, your Honor. I thought it called for a yes --

THE WITNESS: This conference call would take place about 3:00 or 3:30 and sometimes we had not always received word from the issuer if his paper was going to be available for the following day. Most of the time we could.

Q So it is probable that you did have that word by the time of the call on March 13th?

A Probable is a better word than definite, yes.

Q So that Penn Central would have been mentioned in that category as well as the top ten category?

A That is correct.

Q Of course, the object of drawing these names and the special order group and the top ten group to the attention of the salesmen is to put them on notice so that they could call these names to the attention of any customer whom they might call or who might call them on the following business day, in this case Monday, March 16th?

A Yes.

Q I am going to show you an place before you, Mr. Van Cleave, Exhibits F-88 in evidence, the group of documents from Franklin's files regarding the purchase of March 16th, and allso Exhibit F-89, the Penn Central note which was purchased by Franklin on that date.

Might I also have Exhibit PD, and what I am referring to is the special order instructions with the time stamp of -- I will ask the witness to give us the time stamp on that document.

A It looks like 11:08.

THE COURT: 11:06, isn't it?

THE WITNESS: I remember testifying to that, but this looks like an 8.

THE COURT: Do the two minutes make any difference, Mr. Stitt?

MR. STITT: I don't believe so, your Honor.

Q We can assume that this conversation between Mr. Bock and Mr. Kaufman took place around 11:00 o'clock in the morning?

A Right, or some time prior to 11:08.

Q I believe you mentioned about five minutes prior?

A Yes, under the normal course of business, yes.

Q Since this note, Exhibit 89, was of the special order type, did that require any instructions from Penn Central Transportation Company?

A I don't understand that.

Q Give us the mechanics as to how this special order note was authorized, prepared and executed. Who called whom --

THE COURT: He has given us that. Do you want it all over again?

MR. STITT: Yes, I do, your Honor, I don't believe he has given it to us in precisely this detail.

A We would receive hopefully the afternoon before to prepare for this conference call -- or if not the first thing in the morning -- the amount available for sale of the railroad's paper from the railroad. We would then begin working on that amount of paper that was available. On a special order basis, we get the order for 500,000, it was within the confines of the ground rules we spoke of that day, the salesman in this case, Kaufman, would get an immediate confirmation from the Goldman, Sachs buyer that

that was a good transaction, that he could go ahead and sell it.

Q So it would have been on a telephone call the previous Friday afternoon as to what paper could be -- in amount -- could be sold on the special order basis?

A Or first thing in the morning, one or the other.

Q Would that involve a telephone call between Goldman, Sachs and Penn Central?

A Yes.

Q Between what offices?

A New York Goldman, Sachs, Philadelphia Penn Cnetral.

Q That's where their treasurer's office was located? That's where Mr. Shaffer, Mr. Loder and Mr. Lepley were?

A They had some offices in New York also, but I know Lepley was in Philadelphia, and that's about all I can say, as far as the people were concerned.

Q Was it Mr. Shaffer whose facsimile signature --

MR. PIEL: Would you let him finish his answer?

Q I am sorry.

A They seemed to swing back and forth from one location to the other, particularly --

Q Does Mr. Shaffer's facsimile signature appear on that note, Exhibit F-89?

A Yes, it does.

Q I show you Exhibit BW received in evidence yesterday, and ask you if that refreshes your recollection as to the fact that his office was located in Philadelphia?

A The letterhead is Philadelphia, but I don't really know where Shaffer's office is.

Q How would instructions be given to Morgan Guaranty to issue the note? Who would give that?

A The authorized person from the transportation company would telephone Morgan Guaranty.

Q From Philadelphia to New York?

A Yes, I would assume so, if that's where the instructions were given, yes.

Q No reason to believe otherwise?

A Right.

Q Would this have been done on the 16th?

A Yes.

Q Exhibit F-88 refers to federal funds being paid by or on account of Franklin on that date to acquite the note, is that true?

A Yes.

Q Federal funds, as I understand your testimony, is money that can be immediate credit, immediate money, on that particular day?

A Yes, that's what I testified to.

Q Is that because the funds can be transmitted on Federal Reserve wire throughout the United States on that particular day?

A Yes.

Q Where would Franklin's funds, their federal funds, have been transmitted after they had been authorized for delivery here in New York on March 16th?

A There is no way of me knowing where those funds would have been used because we took delivery -- pardon me, let me amend that. Franklin took delivery at Chemical. I assume that we took credit at our account at Chemical and just simply used the money there. They wouldn't necessarily be transferred anywhere. It could just stay there or it might go to another bank where we needed federal funds.

Q Was Penn Central notified by telephone at the end of the day of the transactions that had been completed and the cash that had been made available?

A I am confused now. I don't know whether you are asking me as it applies to the federal funds --

Q At the end of the day on March 16th, after all sales of Penn Central paper had been completed.

A Can I forget federal funds?

Q Yes, forget federal funds. Would there be a telephone call from Goldman, Sachs in New York to Penn Central in Philadelphia, notifying them of the trades that had occurred and the money that had been delivered?

A The telephone call was made reporting the trades so that they in turn could call the bank.

THE COURT: Which bank?

THE WITNESS: The Morgan Guaranty, to have them deliver the note, release the note.

THE COURT: That isn't what he is calling about. I think he is trying to find out, at the close of business for you, you had sold so much of Penn Central's commercial paper on a special order basis. Did you call Pen Central and tell them how much of their available special order funds that they had told you about either that morning or the night before had been sold by you during the day?

THE WITNESS: Yes. And then giving them the figures so that they could call their bank and deliver the notes to us. Thatwas the purpose of that telephone call.

In other words, it was all done in one telephone call. If we had 8,000,000 available and let's say we sold it all, they wanted to know the details so they could report it to the bank so that they could deliver the notes to Goldman, Sachs, so therefore we would report that transaction just that way, and that was it.

THE COURT: That's the only information that Penn Central received regarding the sales by you on special order during that day?

THE WITNESS: Yes, your Honor.

Q And this would be a call from New York to Philadelphia?

THE COURT: That would occur some time around 1:00 p.m.?

THE WITNESS: Yes, sir, right, the cut-off time exactly.

Q You also mentioned calls from Mr. Lynch --

THE COURT: Pardon me, Mr. Stitt. Are you interested at all in how Penn Central then got the proceeds into its hands? I thought you were.

MR. STITT: Yes,and I believe I took the witness as far as I could take him on that particular point, your Honor.

THE COURT: Why? He says the proceeds would be in his bank under the defendant's name. Can he go further? How did you give the money to Penn Central for its use?

THE WITNESS: Morgan delivered the notes and we paid Morgan.

Q You testified also, I believe, about the mailing of a confirmation letter?

A Yes.

Q Do you find a confirmation letter at the end of Exhibit 88?

A Is that it?

Q Yes, and here is the specific document, Mr. Van Cleave. Do you have that confirmation letter before you?

A Yes, I do.

Q That's dated March 16th, which is the same date as the trade?

A Yes.

Q May we assume that it was the usual course to send out the letters on the date as indicated?

MR. PIEL: If your Honor please, I object to the form of the question as to what he wants to assume.

THE COURT: Sustained. Ask him and let him tell you.

Q Would you tell us when that was sent out?

A On March 16, 1970.

THE COURT: What exhibit is that?

MR. STITT: This is Exhibit 88, your Honor, and this is the confirmation letter of March 16th, which is part of that exhibit.

Q I also draw your attention to the following sentence following an X in a box: "We have enclosed for your files financial information received by us from the company."

Would that refer to the green sheet of February 18, 1970, which is Exhibit 84 in this case?

A I don't really know, because I didn't -- I don't send out the sheets and I don't know if that green sheet was prepared for this sale.

Q I show you Exhibit F-84 in evidence, a green sheet dated February 18, 1970.

MR. PIEL: What number, Mr. Stitt? I don't hear you.

MR. STITT: Exhibit F-84.

A I would have to assume from the date of the green sheet --

MR. PIEL: I object to assumptions, your Honor. He is asking him what he knows.

THE COURT: I will take his assumption.

A (Continuing) I have to assume that it was in this package, because it is dated February 18, 1970. Therefore, it was prepared and under the normal course of procedure it would be enclosed with the confirmation letter.

Q If I had placed before you a similar confirmation letter under date of March 13th in connection with a trade on that date of Penn Central Transportation which also had an X in the same box in front of the same sentence about enclosure of financial information, would that also have referred to the enclosure of the same green sheet of February 18th?

A Well, now, that makes this whole line of questioning different.

If there was a trade on March 13th and they received the financial information on March 13th from that March 13th confirmation, it might have been that they already received this information and we didn't send it on the 16th. But there is no way of my knowing, because I have nothing to do with this.

Q So either it would have been sent on the 13th and not on the 16th, or, in any event, duplicates sent on both dates?

MR. PIEL: I object to the question. It has been asked and answered. The witness said he didn't know.

THE COURT: Overruled.

Q Would you answer the question?

A You will have to repeat it for me.

(Record read.)

A Yes, I think that's right.

Q I ask you, was there overnight mail delivery in New York City in March 1970?

THE COURT: How would he know?

A God knows.

Q Mr. Van Cleave, you were also asked on direct examination about the types of purchasers of commercial paper, if not Penn Central Transportation. Relating to the customers who purchased Penn Central Transportation Company, where were they located?

A I'd have to answer that by saying nationwide. I can't give you any specifics.

Q Would this include corporations, business firms?

A I would assume so.

Q Is that your recollection?

A I can't specifically say that a corporation purchased the note, but I would certainly think they would have to, with all we had for sale.

Q I am going to show you this document, and I will place it before you simply for your use in refreshing your recollection.

MR. PIEL: What is the document, Mr. Stitt?

MR. STITT: The document is Exhibit F-90 for identification.

Q Does that document refresh your recollection as to whether companies and business firms purchased Penn Central commercial paper from Goldman, Sachs?

A Yes, it does.

Q Did this include small firms as well as large?

A You have to define for me what that means.

Q Firms that are not stock exchange, large corporations, publicly held?

A I am sorry, that is so all-inclusive, I really can't answer that.

THE COURT: What's the point of your question?

Q Did it include --

MR. PIEL: Your Honor, this is a misleading examination, and I must protest. He is showing him a list of note holders at the time of the reorganization, not names of persons to whom salesmen spoke in selling notes.

MR. STITT: If your Honor please, this document emanates from Goldman, Sachs & Company.

THE COURT: Supposing it does? What is its relevance?

MR. STITT: I am simply using it to refresh his recollection.

THE COURT: As to what?

MR. STITT: On the point under the 1934 Act as to whether or not this was a kind of note that was acquired by persons generally. It is one of the four factors involved, as I understand the law, in the test of security definition under the '34 Act.

THE COURT: I don't know what you mean by persons generally.

MR. STITT: As opposed to a limited group of persons as contrasted with the general public. I may not be stating the proposition correctly, but I think that's the substance of it.

THE COURT: I assume that he could answer the question as to how many people they had sold the commercial paper to on March 16, 1970.

MR. PIEL: Your Honor, Exhibit CU in evidence has the names of every single person to whom Goldman, Sachs delivered Penn Central notes.

THE COURT: That may be an easier way of doing it.

MR. STITT: I do agree, your Honor, and I will proceed to another line.

Q Mr. Van Cleave, you were asked yesterday about bank lines of credit. I believe that you mentioned two broad categories, is that true?

A Two broad categories? Could you refresh my memory?

Q For example, in one category did you describe demand and swing lines and in another category did you describe standby or back-up lines?

A Yes.

Q I believe you identified Exhibits BW and BZ, documents relating to the First National Bank of Chicago and Penn Central Transporration Company under date of February 5, 1970?

A Yes.

Q I place those copies before you. I ask you, do those documents represent a transaction whereby First National of Chicago's existing $5,000,000 participation in standby or back-up lines was being switched to a $5,000,000 participation in a swing line?

A First of all, you say from a standby or back-up line, and they are two different things. This says standby line into a 5,000,000 swing.

Q Thank you.

Is it also true, as stated in Exhibit BW, the letter from Penn Central's treasurer, Mr. Shaffer, that Penn Central expected to use that $5,000,000 on Monday, February 9th?

A Yes.

Q I am going to place before you Exhibit F-2, or a copy thereof, which is the blue sheet of February 5, 1970 by Mr. Wilson indicating a copy to Mr. Van Cleave, and I am going to draw your attention, Mr. Van Cleave, to the following statement that appears in the third paragraph of the first page, reading as follows, by Mr. Wilson in conversation with Mr O'Herron:

"In the past he," -- that is, O'Herron -- "had told us he would be willing to take us out of our position in Penn Central and put it in the revolving credit agreement we asked. I asked if we were to request he do that on the $15,510,000 Penn Central notes we now own, would he. He said he didn't think he wanted to that day as the New York banks he is going to see this afternoon to set up the additional $50,000,000 five-month lines are the same ones he would have to contact today, and he didn't feel this was very good strategy. I concurred with his reasoning. He then said he had talked with some of his banks who are in the $50,000,000 back-up lines for paper and was prepared to buy back $10,000,000 of their notes from us on Monday, February 9th, to which I agreed."

I am also going to draw your attention to Exhibit F-4 in evidence, Mr. Wilson's blue seet of February 12th, a copy of which is indicated to you, Mr. Van Cleave, the following sentence at the beginning of the paragraph. actually, February 12, 1970:

"I talked with John O'Herron several times this week. On Monday" -- parenthetically, February 9th -- "they bought back from our position approximately $10,000,000 Penn Central notes and put it in their back-up lines."

Mr. Van Cleave, I ask you if there is a relationship among Exhibits BW, BZ and the portions which I have just read to you from Exhibits F-2 and F-4 in evidence?

A You have to give me that again. Is there a relationship, did you say?

Q Yes.

A I am sorry, I don't know what you are driving at.

Q Is it true that First National's existing or pre-existing $5,000,000 in their position in the back-up lines were used to buy back one-half of the $10,000,000 of the inventory position of Goldman, Sachs on Monday, February 9, 1970?

A Not being able to trace the dollars, I think you probably would have to ask somebody from the railroad that question, because I don't know what else they borrowed. If they just borrowed $10,000,000 on that day, then that might make that answer correct, but, I mean, there is no way of my knowing how much money they borrowed on that day out of their lines.

THE COURT: Wait. This shows on February 5th that Chicago changed 5,000,000 from standby to swing line, is that right, from that Exhibit BW?

THE WITNESS: Yes.

THE COURT: You say that you can't tell whether it was that $5,000,000 that was used on February 9th to buy back? He doesn't know?

THE WITNESS: There is no way I can tell from this.

Q Have I exhausted your recollection on this point, Mr. Van Cleave?

A Pardon me?

MR. PIEL: I object to the form of the question. He has no recollection.

Q Have I exhausted your knowledge on this point?

A Yes.

MR. PIEL: Analysis.

Q Mr. Van Cleave, you also were asked about Exhibit BQ, a memorandum, if I may use that term, dated September 10, 1969. May we have that document, please?

This document concerns the subject of inventory, if I may use that broad overall term?

A It discusses policy. The title is "Commercial Paper Policy."

Q Did I understand your testimony to be that as of

September, 1969 you were in favor of increasing the overall inventory --

THE COURT: September or October?

MR. STITT: September, your Honor.

THE COURT: That's not the date on BQ, unless you are no longer referring to BQ?

MR. PIEL: That's right, your Honor, it is September 10 --

THE COURT: It is September 10th?

MR. PIEL: That's right.

THE COURT: I am sorry, my mistake.

Q Is it true that as of that time, September, 1969, you were in favor of increasing the overall inventory ceiling for the commercial paper department?

A That's correct.

Q Do I understand your testimony to have been yesterday that by December you had changed your mind and you wanted to reduce the overall inventory?

A May I explain why?

Q Is the answer yes?

A Yes.

Q Thank you. And I believe you mentioned the cost factor?

A That is correct.

Q Was there any support within the firm for the proposition that investories shouldn't be reduced?

A Give me that again, please. Will you read that to me?

Q Let me rephrase it. It is perhaps a clumsy question.

In or about this time, late 1969, the forepart of 1970, did any persons in the firm take the position that inventories, speaking generally, now, shouldn't be reduced?

A No, no.

Q You were shown an organization chart yesterday, I have a copy which is Exhibit F-60. Was there a John C. Whitehead with Goldman, Sachs as of 1969 and '70?

A Yes.

Q Was he a partner in the firm?

A Yes.

Q Was he a member of the management committee?

A Yes.

Q To your knowledge, did Mr. Whitehead ever take the position that Goldman, Sachs' willingness to take on inventory of tailor-made securities to fit the issuers' needs has been an effective competitive tool in getting and keeping business?

A I had many discussions with John about this point, and he would be willing to reduce the inventories as long as we were able to keep the outstandings up. I do know that was his personal view.

Q In these discussions did he also point out that commercial paper continues to be an excellent door opener to other new business?

A That was generally thought of, yes.

Q Is it a fair summary of his position that he thought that perhaps Goldman, Sachs shouldn't be too hasty in cutting down on the number of issuers and the amounts in inventory?

MR. PIEL: If your Honor please, Mr. Stitt's habit of walking forward and dropping his voice, compounded by an open window and the street noise -- I am sorry to be a nuisance about this.

(Record read.)

A I think that's fair to say.

Q You were also asked questions, I believe, about a report in which you had a hand in preparing on the commercial paper department bearing the date March, 1970, Exhibit F-56 in evidence?

A That's the blue book, I assume?

Q Yes. This is a copy.

A Yes.

Q After the preparation of that report did Mr. Whitehead prepare a response?

A Not to my knowledge.

Q Or a memorandum commenting on that report?

A I do not recall.

THE COURT: Show it to him. Is it marked for identification?

MR. STITT: This is marked Exhibit F-58 for identification.

Q I show you Exhibit F-58 for identification, Mr. Van Cleave, and ask you if you can tell us what it is? I would direct your attention to the notation in the upper right-hand corner indicating to whom copies were sent.

A The title is "Report on the Commercial Paper Department to Levy from Whitehead," with copies to Wilson and myself.

Q Is your recollection now refreshed that you did receive a copy?

A I am going to have to read this.

Q Please do.

(Pause.)

A I don't want to take the Court's time. I have gotten through the first three or four pages and I do not recall this document.

MR. STITT: Your Honor, this document, I represent, was produced during pretrial discovery from the files of Goldman, Sachs. It was marked Exhibit P-123 at a pretrial deposition on May 3, 1972, and I offer it in evidence.

MR. PIEL: Your Honor, there is no question about the authenticity of it. I object, however, on the grounds of relevance, materiality. It is the state of mind of one member of the firm reached on April 28th and is so remote from an indication --

THE COURT: You put in the report to which this is a comment, did you not?

MR. PIEL: Your Honor, he has read the report and is commenting on it a month after the transaction. The report in question was placed in evidence by Mr. Stitt, but I developed what I thought was relevant to the issues here, what was learned from the study reflected by the report and what that did to influence the actions of Goldman, Sachs in the time prior to the purchase on March 16th. Now we are a month later with one member of the firm having some animadversions about the matter. I just think it is so remote as to be irrelevant.

MR. STITT: If your Honor please, this particular exhibit is designated in the pretrial order, to my knowledge and recollection, by both parties. It is true I offered it as part of my case, but it does tie in with the document received, Exhibit 56.

THE COURT: Is it in the pretrial order?

MR. PIEL: Your Honor, it is noticed by Mr. Stitt in the pretrial order.

THE COURT: Did you object to it in the pretrial order?

MR. PIEL: 56 is in evidence without objection.

THE COURT: You are referring to 58, Mr. Stitt?

MR. STITT: Preliminary to that I said that 56 was designated by both parties. 58 I submit ties in --

THE COURT: I have it in my hand, Mr. Stitt, and I am asking Mr. Piel to find out whehter he objected to it in the pretrial order.

MR. PIEL: Your Honor, I am examining the pretrial order and I see that we did not reserve an objection.

THE COURT: All right. It will come in

(Plaintiff's Exhibit F-58 was received in evidence.)

THE COURT: Go ahead, Mr. Stitt.

MR. PIEL: Your Honor, may I correct that? I forgot that the pretrial order, as I mentioned to your Honor at the outset when all of the exhibits were being put in, reserved all objections of relevancy for the trial to be ruled on at the time of trial, and because we had expected that they would be introduced and ruled on as to relevance in the course of trial, and that was the understanding on both sides, relevance was reserved and the pretrial order only dealt with concessions as to other grounds of objection.

THE COURT: I will take it for what it is worth, in view of the fact that you have put 56 in or your own copy of 56, because you wanted it in as much as the plaintiff did.

All right.

MR. STITT: Your Honor, may I have Exhibit 56 or I believe it would be more helpful if I could have the original that I believe was substituted? I am going to place that before the witness.

Q Mr. Van Cleave I am going to direct your attention to Page 5 of Exhibit 56 of the report on the commercial paper department, which I believe you testified yesterday you had a hand in preparing, is that correct?

A Correct.

Q I direct your attention first to the paragraph some 15 lines towards the bottom of Page 5. Do you recall Mr. Piel drawing certain portions of that paragraph to your attention yesterday?

A No, I don't. I am sorry.

THE COURT: I suggest we have a short recess.

(Recess.)

BY MR. STITT:

Q Mr. Van Cleave, you previously testified about the cost factors involved in maintaining inventory and how they would be served by reducing overall inventory.

I ask you whether or not there were other benefits which you thought Goldman, Sachs might gain with a decision not to inventory commercial paper or to reduce substantially its overall inventory?

THE COURT: Aside from the cost factor?

Q Aside from the cost factor.

A Other benefits?

Q Yes. And to refresh your recollection, I would direct your attention to the third and fourth lines from the bottom of Page 5 of Exhibit 56, the report which you helped prepare under date of March, 1970.

A Yes, I recognize all of these.

Q Among these other benefits would have been a reduction of risk, isn't that so?

A The risk of notes being lost or stolen, that is what you are referring to?

Q Specifically turning over to Page 6, items 3 and 6 on that page. Do you have those paragraphs in mind?

A Yes, I do.

Q Do you agree with the statements contained therein?

A Yes.

THE COURT: What do they say?

MR. STITT: Paragraph 3 reads as follows, your Honor:

"The Texas Gulf Sulphur case and the Merrill Lynch-Douglas Aircraft case have made financial officers more reluctant to tell us news prior to a general public release. In recent months adverse news at Libby, McNeill & Libby, General Dynamics and Penn Central have made us question the wisdom of positioning large amounts of an issuer's notes. We now doubt there are sufficient business reasons to inventory paper due to the remote risk of some day having 5 to $10,000,000 of commercial paper collateral (even temporarily) unacceptable for loan purposes."

Paragraph 6 reads as follows:

"In the past, the commercial paper department has recommended to the management committee that the department be incorporated for the purpose of minimizing risk. Separate incorporation of the department is not as necessary if we carry virtually no inventory."

Q Mr. Van Cleave, you testified that as number two man --

THE COURT: That last one has nothing to do with our lawsuit.

MR. STITT: I am not prepared to make that statement at this point, your Honor. I would reserve on that.

THE COURT: What do you think it means, since you have gone to the trouble of cross-examining on it?

Q I will ask you, Mr. Van Cleave, what were the factors involved in the commercial paper department recommending to the management committee that the department be incorporated for the purpose of minimizing risk?

MR. PIEL: Where is that recommendation?

THE COURT: Page 6.

MR. STITT: First sentence.

A That's not a recommendation. I don't see how you can call it that. He says there are a number of other benefits.

THE COURT: That's the question put to you. What are the benefits aside from the cost factor? One is the risk factor. What does this mean, number 6?

THE WITNESS: What this means is that we in carrying on our business borrow money for all securities, bonds, stocks and for our trading operations. If we were to have a note in our inventory and we were incorporated, it wouldn't affect the borrowing of the partnership.

Q That's the only factor?

THE COURT: That's the way it sounded to me when you read it.

Q Was that the only factor, Mr. Van Cleave?

A Yes.

THE COURT: In Number 6.

Q You testified that you came to New York in or about August, 1968?

A Yes.

Q That was to be the Number 2 man just below Mr. Wilson in the commercial paper department?

A Yes.

Q And that you held this positing during the years 1968, 1969, and 1970?

A Yes.

Q And during that period, August, 1968 through 1970, you were in charge of inventory, is that your testimony?

A That fell under the number of things -- I was in charge of the day-to-day operations, which include the inventory.

Q Thank you for that clarification.

Did you also testify yesterday that Goldman, Sachs had about 200 to 225 issuing companies during this period?

A Yes.

Q For which two act as exclusive dealer in selling their commercial paper?

A Yes, most all of them. There were several that deviated from that, but most all of them.

Q Just a handful?

A Yes.

Q And Goldman, Sachs would sell that paper as principal?

A We would act as principal in the transaction, yes.

Q And that was the case involving Penn Central? You were exclusive dealer and you sold the paper as principal?

A Yes.

Q I am going to ask you if you can expand for us and break down and maybe increase this number of 200 to 225. For example, first of all, would you tell me how many different companies, your best estimate, the number, sold paper through Goldman, Sachus during this period, say, August, 1969, to say, June of 1970?

A I'd say approximately just about all of them.

Q 225 in all?

A Yes.

Q How many might have paper outstanding at any one time during the year, on an average day?

A I'd say 175 to 200. I must quote ranges because obviously I don't have this --

Q Oh, yes, we are dealing in estimates.

MR. PIEL: Excuse me. Did the witness finish his answer, Mr. Stitt?

THE COURT: Yes.

THE WITNESS: Yes.

Q On a typical trading day, how many of these issuers would have paper available for sale as opposed to paper outstanding?

A I'd say probably 60 to 75.

Q Was this true in March, 1970?

A Yes.

Q Is it true that Goldman, Sachs set a $5,000,000 limit --

A Guideline.

Q Please let me finish my question, Mr. Van Cleave.

A I apologize.

Q We will get a long just fine.

Is it true that Goldman, Sachs set a $5,000,000 limit on the commercial paper of Penn Central, of Penn

Central Transportation, which it would carry in inventory and that this limit was set in or about February, 1970?

A Yes. We set an internal guideline of --

Q The answer to the question is yes?

A Yes.

MR. PIEL: If your Honor please, the witness has qualified his answer and is entitled to.

THE COURT: I gather there is no qualification for the word "yes."

MR. PIEL: Your Honor, he said yes, he set an internal guideline.

THE COURT: No, he said, "yes." The answer is no if he didn't do it. The question is did he set a limit of $5,000,000 on inventory in Penn paper in the early part of February. The answer is either yes or no. He said yes.

Q Is it true that this limit --

A May I change that answer?

Q No, please, Mr. Van Cleave --

THE COURT: What do you mean, he can't change his answer?

MR. STITT: I am sorry, your Honor.

THE COURT: If he wants to change his answer, he can.

Go ahead.

THE WITNESS: My answer would be no in that we set a $5,000,000 guideline, which is proven by the fact that it was exceeded.

Q Is it true that a $5,000,000 limit was placed on this inventory by Mr. Wilson and Mr. Levy?

A No. Mr. Wilson and Mr. Levy set a $5,000,000 guideline.

Q Isn't it a fact that you were not consulted about this decision?

A Yes.

Wait a minute. Let's back that up. I don't understand that.

THE COURT: When was the --

Q Isn't it true that this limit was placed at a meeting or at least reported at a meeting on February 6, 1970--and I am referring to Exhibit F-3, your Honor -- attended by Mr. Levy and Mr. Wilson on behalf of Goldman, Sachs and by Mr. Bevan, Mr. O'Herron, Mr. Loder of Penn Central, and I draw your attention to Exhibit F-3?

I don't see that you received a copy of that particular document.

THE WITNESS: I am confused, your Honor, in that I don't know if he is asking me if I participated in the decision or that I knew of the decision after it was made.

THE COURT: Mr. Stitt?

Q You did not participate in that decision, did you?

A I did not.

Q And this decision was made at a meeting on February 6th, at which Wilson and Levy said, and I direct your attention to the last full sentence in the first page of this exhibit, "We said that in the future we did not feel we could inventory as much of the Penn Central as we had in the past and that Goldman, Sachs felt that $5,000,000 at any one time would be our limit."

Do you see that in the exhibit, Mr. Van Cleave?

A Yes, and I recall a converation from Mr. Wilson when it was reported to me, and he told me that we were going to use this 5,000,000 as a guideline, try to adhere to it, but from time to time if we must go over, that that would be acceptable.

Q Is it true that Goldman, Sachs did not have a dollar limit on the inventory of commercial paper of any other issuer than Penn Central at any time in 1968, 1969, and 1970?

A No.

Q To supplement your testimony, Mr. Van Cleave, I am going to draw your attention to your examination before trial --

MR. STITT: Your Honor, so the record will be clear, Mr. Van Cleave's examination was conducted on two days. The first on January 21, 1971, which would go through Pages 1 to 126, and the remainder of the examination, Pages 127 to 243, was conducted on March 28, 1972.

I also call attention to the last page which shows that Mr. Van Cleave executed his transcript after making some corrections under date of August 20, 1973 before Ned R. Sachs, a notary public.

Q Mr. Van Cleave, I am now going to ask you if beginning at Page 84, Line 6, you were asked these questions and whether you gave these answers:

"Question: Goldman, Sachs set a $5,000,000 limit on the amount of Penn Central commercial paper it would inventory at a certain point in time, is that correct?

"Answer: Yes.

"Question: Who set that limit?

"Answer: As I recall, that was agreed upon by Gus Levy, Robert Wilson of Goldman, Sachs & Co. and John O'Herron of Penn Central Transportation Company.

"Question: When?

"Answer: I don't recall it.

"Question: Were you consulted?

"Answer: No, not to my knowledge."

MR. PIEL: Where are you reading now, Mr. Stitt, please, the page?

MR. STITT: Page 184.

Q "Question: Were you consulted?

"Answer: No, not to my knowledge."

I was going to omit the next question and answer, but I will read it so we have the full context.

"Question: Were you advised?

"Answer: I am sure I must have been, but I don't recall.

"Question: Do you recall that you were so advised by a blue sheet from Robert Wilson on or about February 5, 1970?

"Answer: I don't recall.

"Question: Did Goldman, Sachs have a dollar limit on inventory of commercial paper of any issuer other than Penn Central at any time in 1968, 1969, and 1970?

"Answer: Not to my knowledge. Wait a minute. Strike that. Would you repeat your question? Will you read the question?

"(Question read.)

"Answer: The answer stands.

"Question: In other words, Penn Central was the only commercial paper issuer as to which Goldman, Sachs & Co. established a dollar limit on the amount of commercial paper which Goldman, Sachs & Co. was willing to inventory?

"Answer: As best I can recollect."

Were you asked those questions, did you give those answers?

MR. PIEL: If your Honor please, it is not fair to the witness to represent that that is his testimony on the subject when he immediately continues in answer to the next question:

"Do you have any doubt about that fact?" to explain what he has just explained here.

May I read the next question and answer as part of what was put to the witness?

THE COURT: You may.

MR. PIEL: "Question: Do you have any doubt about that fact?

"Answer:" --

MR. STITT: I believe it begins:

"Question: Yes.

"Answer: Pardon me, as best I can recollect.

MR. PIEL: "Question: Do you have any doubt about that fact?

"Answer: From time to time there could be targets, you might say, of what we want to keep in inventory, and that is why my hesitation. I don't know that I can call them limits, per se.

"Question: However, the amount in Penn Central was a limit, was it?

"Answer: At that particular time, at this particular 5,000,000, yes. However, if my memory serves me right, there was also a willingness to go above that limit at certain periods of time, so I would even liken it more to a target."

Q Were you asked all those questions and did you give those answers, Mr. Van Cleave?

A Yes.

Q Was there any disclosure to purchasers of Penn Central commercial paper, either existing holders or prospective purchasers, that Penn Central was the only issuer as to which Goldman, Sachs had established an inventory limit?

MR. PIEL: If your Honor please, I object as irrelevant to issues in this case.

THE COURT: Overruled.

(Record read.)

MR. PIEL: If your Honor please, I object on the further ground that it assumes a fact not in evidence.

THE COURT: Well, the best we have from this witness is he doesn't know, he doesn't think so.

MR. PIEL: His entire testimony says they set targets or amounts --

THE COURT: In a couple of others, he thinks.

Q Do you have the question?

THE WITNESS: Am I to answer the question?

THE COURT: Yes.

A I don't know. I don't recall.

Q To supplement your testimony, immediately following the portion that was just read on Pages 184 to 186 --

MR. PIEL: What pag?

Q Page 186, continuing at Line 9, I will ask you if you were asked these questions and whether you gave these answers:

"Question: Did Goldman, Sachs & Co. disclose to purchasers of Penn Central commercial paper or existing holders of Penn Central commercial paper that Penn Central was the only issuer as to which Goldman, Sachs had established an inventory limit?

"Answer: Not to my knowledge."

MR. PIEL: Excuse me, I would like to interpose an objection that is noted in the transcript --

THE COURT: First of all, I don't understand reading this.

MR. STITT: I am just trying to supplement --

THE COURT: You can't supplement. You can use his deposition to attack his credibility, but you can't put it in as direct proof. He was only an employee at the time. He wasn't a member of management.

MR. STITT: I was drawing it to his attention to supplement his testimony, your Honor.

THE COURT: To supplement what? You can't put it in directly. You may read it if it is inconsistent with what the witness had to say from the stand. You are putting it in as testimony in chief.

MR. STITT: I will ask this question:

Q Did Goldman, Sachs disclose to prospective purchasers of Penn Central or holders of the paper that Goldman, Sachs had established a $5,000,000 limit on inventory on or about February 5, 1970?

A I am confused. I thought you were going to ask me questions.

THE COURT: Let's start fresh.

Did Goldman, Sachs ever indicate to any of its customers, purchasing customers, that it had put a limit of $5,000,000 on inventorying of Penn Central commercial paper?

THE WITNESS: Not to my knowledge.

Q Is it true that on February 9th Penn Central did buy back from Goldman, Sachs' inventory some $10,000,000?

THE COURT: That's been done already, hasn't it, Mr. Stitt?

Q Is it true that this was done because Goldman, Sachs wanted to reduce its inventory in Penn Central?

A Yes. I believe I testified to that.

Q Did you ever return commercial paper to any other issuers because you wished to reduce your inventory of that particular issuer?

A Yes.

Q I am going to ask you whether at Pages 150 to 151 of your examination before trial you were asked these questions and gave these answers: -- I am reading a few earlier, your Honor, so we get a framework, beginning on Line 21, Page 150.

"Question: Was commercial paper ever returned to issuers because Goldman, Sachs & Co. wished to reduce its inventory of that particular issuer?

"Answer: Yes.

"Question: Did that happen in Penn Central?

"Answer: Yes.

"Question: When?

"Answer: I don't recall.

"Question: On more than one occasion?

"Answer: Not to my knowledge.

"Question: Are you referring to the $10,000,000 take-back by Penn Central from Goldman, Sachs & Co. on or about February 9, 1970?

"Answer: The amount and date I can't be sure of, and dates, I should say.

"Question: Did you ever return commercial paper to any other issuer because you wished to reduce your inventory of that particular issuer?

"Answer: Not that I can recall."

Were you asked those questions, did you give those answers?

A That was my recollection at the time of the deposition, but after reviewing our files, I found that we had returned other issuers.

Q That was the testimony that you --

THE COURT: He admitted it, Mr. Stitt.

Q Did you make any change of that testimony when you executed your transcript on August 20, 1973? I direct your attention to the questions and answers that I have just read.

(Pause.)

A No, I did not amend it or yes, I did not amend it.

Q Was this $10,000,000 take-back disclosed to any holder or prospective purchaser of Penn Central paper?

A Not to my knowledge.

Q Is it true that on February 5th Mr. Wilson told Mr. O'Herron that in the future Goldman, Sachs would not inventory their notes?

I direct your attention to Exhibit F-2 or a copy thereof and the second paragraph of that document on the first page.

A I am sorry, I don't see that. In the second paragraph, that we weren't going to inventory?

Q I direct your attention to the following language in that paragraph:

"I," that is Wilson, "told him," that is O'Herron, "Goldman, Sachs was going to continue to offer their paper not only the $15,510,000 in inventory, but also the maturities as they come due. When I said our procedures in the future would probably be set up so we handle their notes only on a 'tap' issue basis where Goldman, Sachs did not inventory their notes, he said this was something he would have to refer to David Bevan, chairman of the finance committee, and that 'he and Gus Levy can talk about that.'"

Does that refresh your recollection?

A What's the question, please? I got lost now on what the question was.

Q Let me ask you this: Was it public information, Mr. Van Cleave, that Wilson told Mr. O'Herron that in the future Goldman, Sachs & Co. did not plan to inventory their notes?

A Not to my knowledge.

MR. PIEL: That he said to Mr. O'Herron that it would probably be, is that it?

Is that the question?

MR. STITT: I will put it again.

Q Was it public information that Wilson told O'Herron that in the future Goldman, Sachs & Co. did not plan to inventory their notes?

MR. PIEL: I object to that as assuming a fact not in evidence.

THE COURT: What are you referring to?

MR. PIEL: That he said any such thing.

THE COURT: Mr. Stitt, what are you referring to?

Q Mr. Van Cleave, I show you these questions and answers, Page 205 of your transcript.

"Question: Was it public information that Wilson told O'Herron that in the future Goldman, Sachs & Co.

not plan to inventory their notes?" --

THE COURT: The objection is that there was no evidence to the effect that they did not plan -- that they planned not to inventory the notes.

Q Was it public information that Wilson told O'Herron that in the future Goldman, Sachs probably would not inventory their notes?

A Not to my knowledge.

Q Was that information disclosed to holders or prospective holders of Penn Central commercial paper?

A What information?

THE COURT: That in the future you probably would not inventory Penn Central notes.

A (Continuing) Not to my knowledge.

Q Is it true that no inventory was carried after April 8, 1970? As shown by those documents before you.

(Pause.)

A That is correct.

MR. STITT: Your Honor, it is now 12:29. Perhaps this might be a good point --

THE COURT: 1:00 o'clock.

Q Mr. Van Cleave, you were also asked on direct examination about the use of commercial paper. Do you recall that?

A No, I am sorry, I don't.

MR. PIEL: I don't recall that either.

Q I withdraw the question.

Is it true that you were asked on direct examination and gave testimony concerning the use of the proceeds from the sale of commercial paper?

A No, I don't believe I did.

MR. PIEL: I don't recall what you are referring to, Mr. Stitt.

Q Do you remember your testimony that such proceeds might be used to pay dividends and taxes?

THE COURT: Of commercial paper?

MR. STITT: Yes.

Q Do you recall that testimony, Mr. Van Cleave?

THE COURT: When?

A Yes, I think I did mention that it could be used as a temporary need for funds.

Q Isn't it true that the proceeds of commercial paper should be used for current transactions?

A Under the SEC 3A3, but I don't think that's in question in this trial.

Q And isn't it true that, speaking generally, commercial paper should not be used as a substitute for long-term financing?

MR. PIEL: I don't understand the framework of the question.

THE COURT: I don't understand it either. I read the ICC memo. They approved it.

MR. STITT: I said speaking generally, overall, your Honor.

MR. PIEL: I object to the form of the question.

THE COURT: Sustained.

Q Is there any understanding within the industry that commercial paper, speaking generally, should be used for current transactions?

MR. PIEL: If your Honor please, I object to the form of this question. Industry is not defined.

Q The commercial paper sales industry. Your industry, Mr. Van Cleave.

MR. PIEL: What commercial paper salesmen understand is irrelevant --

Q No, sales industry.

THE COURT: This gentleman is head of the unit.

MR. PIEL: He is being asked now whether there is an understanding between him and other dealers and other --

THE COURT: Not an understanding, as to what they do. I assume these fellows talk to one another, don't they?

THE WITNESS: We don't, really, because of this exclusivity that exists.

THE COURT: This has nothing to do with exclusivity. This question goes to what commercial paper is used for.

THE WITNESS: Ithink what I testified to yesterday would be my same answer, that certain corporations use the proceeds of commercial paper for various things. For example, the direct finance companies, if you will, create a layer of permanent short-term debt. They loan dollars and they keep making loans and they pay some of them off and they keep going, and they maintain a permanent layer. Does one define that as long-term debt? You know, I am not really qualified to say that that is substitute for long-term debt.

MR. STITT: Your Honor, I suggest that answer is not responsive to the question.

THE COURT: It is as responsive as he can make it to the question you put to him.

Q Are you familiar with the firm of Solomon Bros. & Hutzler?

A Yes.

Q Are they a commercial paper dealer in New York?

A They are.

Q And they are a respected competitor of yours?

A Yes, they are a competitor of ours.

Q And their views and statements have respect in the industry?

MR. PIEL: Can't hear you, Mr. Stitt.

Q Their views and statements have respect within the industry?

A They are the smallest factor in the business, in the paper business, that is.

Q But their views command respect?

A I would have to think so, from investors. I haven't seen their views, so it is hard for me to say.

Q I am going to draw your attention --

THE COURT: He just answered your question, hasn't he? He says he hasn't seen their views.

MR. STITT: Well, your Honor, perhaps he will.

THE COURT: Show it to him.

Q I draw your attention to Exhibit F-61 for identification, a publication of Solomon Bros. & Hutzler, 1968, as I interpret the document, and I draw your attention to this paragraph on Page 5. Perhaps you can look at it as I read it, and I will do it as loud as I can --

MR. PIEL: I object to its being read in any tone of voice. It is not in evidence. It shouldn't be put into the record. If he is trying to refresh the witness' recollection, he can show it to him.

THE COURT: He is going to ask the witness, does this correctly represent the custom and useage in the business. But if only one person does it, it is fundamental law that it doesn't.

So it will have to go beyond Solomon Bros. & Hutzler to establish this.

MR. STITT: I may have to take it in a couple of bites, your Honor.

THE COURT: Go ahead.

Q "Commercial paper is an exempt security under Section 3(A)3 of the Securities Act of 1933 and accordingly no registration with the Securities & Exchange Commission is required when offering commercial paper. However, in order to qualify for this exemption, the proceeds from the sale of commercial paper must be used 'for current transactions' and not as a substitute for long-term financing."

Do you agree with that statement?

MR. PIEL: I object on the grounds that Solomon Bros. & Hutzler was practicing law and not stating --

THE COURT: The question of law is for me and not for Solomon Bros. & Hutzler. That's their view of what the law is. It doesn't mean it has any effect in this lawsuit.

MR. PIEL: In fact, your Honor, they are rather modest about it because the next sentence says, "Corporate counsel should be consulted to ascertain whether in a particular situation" --

THE COURT: That's right. Objection sustained.

Q Isn't it known at Goldman, Sachs that commercial paper should be used to finance current working capital needs?

MR. PIEL: Objection, your Honor. This again is asking whether or not Goldman, Sachs knows the law.

THE COURT: If you are in the market, you are presumed to know the law, aren't you, especially when you have the share of the business that you have?

MR. PIEL: I am willing to concede that the law is binding on them.

THE COURT: I think it is a fair question if he knows it, either of his own knowledge or whether he inquired of corporate counsel what he should do. He is the one that is selling it. He ought to know the rules of the game in this area.

MR. PIEL: If your Honor please, that's not the evidence. The evidence is that the credit department and

Mr. Wilson make those decisions.

THE COURT: He is asking him whether he knows. In this table of organization, he is way up on top.

A The answer is yes, I have a general knowledge that that is the use of the proceeds of commercial paper.

Q Do you know Mr. Peter Fisher?

A Yes.

Q Is he a vice-president of Goldman, Sachs, as you were back in the 1960's?

A I don't know whether he was at that time or not.

Q Did he have any liaison connection with the commercial paper department when you were the number two man in the department during 1968 to 1970?

A He was a new business man at some point in time and then that changed, and I can't give you the relative dates, but at one point in time he was the new business man that I spoke of earlier that was assigned to the Penn Central Transportation Company as selling all the services of Goldman, Sachs.

Q Do you recognize this document, Exhibit F-35 for identification?

A By looking at this document I can answer the first question about the vice-presidency. He was not.

THE COURT: Well, I understand there were vice-presidents and vice-presidents. What about the second question?

THE WITNESS: I am sorry, what is the question?

MR. PIEL: May I have the second question now?

THE COURT: Are you familiar with that document?

Q Can you recognize it for us?

A I haven't seen this particular document; no.

Q Is it true that during the years 1968 and continuing through the first half of 1970 it was the practice of Goldman, Sachs to obtain assurance from issuing companies that the proceeds of their commercial paper notes would be used for current transactions?

A Obtain assurance?

Q Yes.

A Can you clear that up for me?

THE COURT: Did you ask them whether the proceeds of the commercial paper that you were selling was being used for current transactions?

THE WITNESS: We would not ask on every particular transaction whether it was this paper we sold for this day. We had a general working knowledge, as I mentioned earlier, that it was for current purposes?

Q Wasn't it your practice to obtain such assurances from the issuers that the proceeds would be used for current transactions? By "you," I mean the commercial paper department.

THE COURT: He doesn't deny it. He says he doesn't do it every time new paper comes out, which could be every day, every week.

A I think I just answered that.

Q So it was the practice?

THE COURT: Generally.

A Generally.

THE COURT: It wasn't done every time a new issuer came out or a special order came out?

Q Did anybody ask Goldman, Sachs to make any inquiry of Penn Central Transportation Company about their proposed use of the proceeds from the sales --

THE COURT: Of each individual?

Q Of commercial paper. Generally, your Honor. I don't refer to the use of each and every sale, but I am talking about generally.

MR. PIEL: I am sorry, I have lost what the question is.

THE COURT: Whether Goldman, Sachs made inquiry of Penn Central as to how they were going to use the proceeds from the sale of this commercial paper.

A I don't know.

Q I ask you, didn't you expect that such inquiry and assurance would have beem made and requested of Penn Central?

THE COURT: I don't know what you mean by that. I sustain the objection.

Q Were you under the impression back in 1970 that such an inquiry would have been made of Penn Central and assurance sought that the proceeds, speaking generally, of the commercial paper notes would be used for current transactions?

A I think probably --

MR. PIEL: Objection, your Honor, as irrelevant. He wasn't in charge of those decisions. That wasn't part of his activity.

THE COURT: I gather that is true. There must be somebody else who is going to testify here. Do you have any deposition testimony?

MR. STITT: I do, your Honor.

THE COURT: Then why don't you do it through that and not through this witness?

Q I ask you --

THE COURT: Wait. Is it in the record already designated as deposition testimony for me to read?

MR. STITT: Yes, but, your Honor, I want to make absolutely sure.

I call attention to the testimony of this witness beginning at Line 8, Page 41 of his deposition -- this was taken on January 21, 1971, beginning at Page 41, Line 8, and continuing over to Page 42, Line 25.

MR. PIEL: You are designating matter now that's not designated.

MR. STITT: Your Honor, I find that this portion of Mr. Van Cleave's testimony has been designated at Page 40 of the pretrial order.

THE COURT: What is there in that testimony that you want to ask the witness about?

Q To your knowledge, Mr. Van Cleave, did anybody at Goldman, Sachs make any inquiry of Penn Central Transportation with respect to the proposed use of proceeds from the sales of commercial paper?

A I wonder if I might just add something in here. My role was to get it sold.

THE COURT: He is asking you do you know.

THE WITNESS: I don't know.

THE COURT: If you don't know, you don't know.

THE WITNESS: I just don't know.

Q In response to that same question on Page 42, didn't you say, "I don't know specifically, but I am sure somewhere during the course of the time we were selling the notes or I should say when we take other notes, there would be assurance that it would be used for current transactions."

A Right, it was conjecture on my part, but I really don't know whether any of them did or not.

Q Did you ever see any memoranda with respect to the proposed use of the proceeds of the sales of Penn Central commercial paper?

A Not that I can recall at this moment.

Q So you don't know of your own knowledge whether there was any such discussion between Goldman, Sachs on the one hand and Penn Central on the other?

A Right.

Q I am placing before you, Mr. Van Cleave, Exhibit F-48, which is the ICC report dated under a service date of November, 1969, which is the subject of testimony given by Mr. Bock, and also Exhibit F-50, a covering letter from Mr. Loder of Penn Central to Mr. Wilson of Goldman, Sachs, under date of November 7, 1969.

MR. PIEL: Does that have an exhibit number?

MR. STITT: Exhibit F-50 in evidence, and I apologize for the omission.

Q I ask you, Mr. Van Cleave, to examine two paragraphs of the ICC report at Page 4, the first paragraph beginning, "Applicant feels that long-term financing," etcetera. The second paragraph begins, "On the whole, applicant," and these are the same two paragraphs that were put to Mr. Bock.

MR. STITT: I won't repeat them now for the record, your Honor, but I would ask this witness now to read those two paragraphs.

THE COURT: What for?

Q First of all, can you tell us whether this document ever came to your attention?

A Never.

Q It never came to your attention?

A No.

Q So you would have no knowledge as to whether that report or those comments in those paragraphs were ever disclosed by Goldman, Sachs to any prospective purchaser of Penn Central?

A That's correct. I didn't read them --

MR. PIEL: I can't hear you now, Mr. Van Cleave.

Q You have no knowledge of any such disclosure having been made?

A That's correct.

Q Did Goldman, Sachs sell commercial paper with maturities beginning after June 21, 1970, with maturity dates of June 22, 1970 and thereafter? The sales, of course, were taken before that.

A I don't know what you are talking about. Any paper?

THE COURT: Did you sell any commercial paper with maturity dates after June 22nd?

THE WITNESS: Of any kind of commercial -- yes.

Q Of Penn Central.

A I am sorry. That's what I was confused about. Did we sell any papers that had maturities longer than June 22nd?

Q June 22nd or thereafter.

A Yes.

Q Can you of your own knowledge or perhaps referring to some of those exhibits, tell us how much Penn Central commercial paper would mature between the dates of, say, June 22nd and July 1, 1970?

A You want me to look it up for you?

Q Please.

MR. PIEL: I don't think you are going to find it in there. You need CU to find maturities.

MR. STITT: May we give that document to the witness?

MR. PIEL: CU is the master computer run. I think the information in CU is complete in that regard. It shows every note sold by Goldman, Sachs of Penn Central along with the maturity thereof.

THE COURT: What do you want the witness to do it for?

Q To your knowledge, did Goldman, Sachs sell paper with maturity dates during that period, June 22nd to July 1st?

THE COURT: Wait, wait. With maturity dates?

THE WITNESS: I am sorry. I am so confused. Are you saying they were sold? When were they sold, any time?

Q Yes, any time.

A You are not saying did we sell paper --

Q No, definitely not.

A Were there maturity dates occuring between --

Q June 22nd and July 1st.

A I don't have the record, but I assume there were.

MR. PIEL: The record is CU, your Honor.

THE COURT: What does CU show, Mr. Stitt?

MR. STITT: Your Honor, I don't have the document before me.

THE COURT: What's the purpose of the question?

MR. STITT: The purpose of the question, your

Honor, is to lead up to this, and that is, can you identify for us Exhibit F-94 for identification?

MR. PIEL: If your Honor please, may I ask the witness to defer an answer until I get a copy?

THE COURT: It is the petition for reorganization of Penn Central.

A What are you asking me, Mr. Stitt?

THE COURT: Do you know that? Have you seen it?

THE WITNESS: No, I never saw it.

Q Did you ever discuss the statements in that petition with anyone?

MR. PIEL: Objection. Irrelevant.

THE COURT: Sustained. What's the date of that petition?

MR. STITT: June 21, 1970, your Honor.

MR. PIEL: Might I add, your Honor, that that was a Sunday.

THE COURT: I remember it well.

Q Mr. Van Cleave, on or about February 5th, did Mr. Wilson request --

MR. PIEL: 1970?

Q -- 1970, did Mr. Wilson recommend to Mr. O'Herron that Penn Central get another $100,000,000 in bank line coverage so as to bring their total coverage up to 100 percent?

A I don't recall.

Q I draw your attention to this statement in Exhibit F-2, the blue sheet of February 5, 1970, second paragraph:

"I said the most important thing they could do is to get another $100,000,000 in standby lines to back up their commercial paper, and that some of these lines should be swing lines or demand lines. He said he did not think that with the banks as tight as they are, they could get $100,000,000 in standby lines."

Does that refresh your recollection?

A Yes.

MR. PIEL: The "I" in that quotation is Mr. Wilson?

MR. STITT: That is correct.

Q On February 6th, Exhibit F-3, did Mr. Wilson and Mr. Levy request of Mr. Bevan, Mr. O'Herron and Mr. Loder that Penn Central get another $100,000,000 in bank lines so as to bring their coverage up to 100 percent?

MR. PIEL: If your Honor please, I object to the question as compound. He has read him from a memo of February 5th. He asked him if that refreshed his recollection about something he knew on February 5th and without waiting for an answer, he is reading him something else and asking him if that is what the document says.

MR. STITT: I believe the answer was it did refresh his recollection.

THE COURT: He answered yes.

THE WITNESS: I said yes.

THE COURT: To the question referring to Exhibit F-2, second paragraph.

MR. PIEL: I apologize. I didn't hear the "yes."

THE COURT: Now, we are up to F-3.

Q F-3. I draw your attention to these portions of Exhibit F-3, beginning at the third paragraph.

"We then got into a discussion of commercial paper and we told them that if they didn't get the $100,000,000 more in lines to bring them up to 100 percent line coverage, we thought their present level of $200,000,000 would run down by 50,000,000 to 100,000,000.

"We also stressed the importance of converting the $50,000,000 of commercial paper back-up lines to demand lines."

Then continuing, beginning at the bottom line, "Both Dave Bevan and John O'Herron responded," --

MR. PIEL: Your Honor, I think it is unfair to skip a sentence that's germane to this discussion.

Q I will continue to read the whole paragraph. "John O'Herron reluctantly said" --

THE COURT: Wouldn't you think the best way to do this is to show it to the witness, tell him what you want him to read, and then put a question to him?

Q In addition to what I read already, begin with this sentence -- just read that whole full paragraph, Mr. Van Cleave.

A Where do I stop?

Q At the end of the paragraph as it continues over. I also call your attention to stipulated Fact 44. Penn Central did not have more than 50 percent bank line coverage for its commercial paper at any time after November, 1969.

I ask you, was it public information that Wilson asked Penn Central to set up $100,000,000 in new lines so that they would have 100 percent line coverage?

A Not to my knowledge.

Q Did Goldman, Sachs & Co. disclose that information to purchasers or prospective purchasers of Penn Central commercial paper or to existing holders of Penn Central commercial paper?

MR. PIEL: Your Honor, Your Honor has ruled on questions of this kind, and I assume I have a continuing objection.

THE COURT: That's right.

A Not to my knowledge.

Q Was it public knowledge that O'Herron had told Wilson that he did not think that Penn Central could get additional bank lines?

A Was it public knowledge?

Q Yes.

A You mean, did O'Herron tell everybody? I don't know what O'Herron would tell the public.

THE COURT: Did you tell the public?

THE WITNESS: Did we tell the public? No, not to my knowledge.

Q Do you know of any public knowledge in that regard?

A Is that asking me the same question, did we disclose to the public?

Q No. I am saying, do you know of any public knowledge of that fact, whether you disclosed it or whether anyone else disclosed it?

A I do not.

Q Was it public knowledge that Bevan and O'Herron had told Wilson and Levy on February 6th that they did not think they could get the additional $100,000,000 in bank lines so as to be brought up to 100 percent coverage?

A I don't know.

Q You know of no such public information, do you?

A No, I do not.

Q Of course, you have no knowledge if Goldman, Sachs made any such disclosure to existing or prospective holders of the paper?

A I do not know.

THE COURT: We will suspend for lunch and return at 2:10, please.

MR. PIEL: Your Honor, may I inquire of Mr. Stitt how long he will take after lunch so I will know what to do about the witness?

THE COURT: Yes.

Mr. Stitt?

MR. STITT: I remind the Court, your Honor, I am the world's worst estimator.

THE COURT: You have been at it for two hours now.

MR. STITT: I will not be more than an hour and I will try to keep it below that, your Honor.

(Luncheon recess.)

AFTERNOON SESSION

(2:15 p.m.)

GEORGE MOTEN VAN CLEAVE, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. STITT:

Q Mr. Van Cleave, I am going to call your attention to Exhibit F-3 in evidence, the blue sheet of Mr. Wilson for February 6, 1970, concerning the luncheon meeting which he had with Mr. Levy and with Bevan, O'Herron and Loder of Penn Central, on February 6, 1970, and I direct your attention, Mr. Van Cleave, to the first three sentences of the second paragraph, which reads as follows:

"The railroad needs an additional $170,000,000 for 1970. Adding in the $56,000,000 anticipated loss, their requirements this year are $226,000,000. The $170,000,000 requirement is made up of $100,000,000 of capital improvements and $70,000,000 for capital equipment."

Was it inside information that Penn Central told Goldman, Sachs that it was budgeting for a $56,000,000 loss for 1970?

MR. PIEL: I object to the form of the question.

THE COURT: Sustained.

Q Was it non-public information?

A I don't know.

Q Did you ever see that information stated publicly anywhere?

A I can't recall.

Q You have no knowledge of having seen any such publication of that information?

A I just can't recall.

Q Did Goldman, Sachs & Co. disclose that information to prospective purchasers or existing holders of Penn Central commercial paper?

A I don't know.

Q You have no such knowledge of any such disclosure having been made by Goldman, Sachs?

A I just don't know.

Q Referring to Exhibit F-3 again in evidence, the February 6th blue sheet of Mr. Wilson concerning the Goldman, Sachs Penn Central meeting of that date, I am going to direct your attention to the second page beginning with the third sentence on the 4th line.

"I told him about a large New York firm that has bought as much as 15 percent of their outstandings and which only yesterday temporarily removed their name from the approved list. We are going to try to set up an appointment for John O'Herron to visit the firm. I also explained Alan Rogers conversation with Jack Vogel and that Alan's feeling was that as long as Goldman, Sachs is going to continue to handle Penn Central's commercial paper, that he would keep the prime rating."

I also draw to your attention Mr. Wilson's statement in a blue sheet, Exhibit F-4 of February 12th, copy of which is indicated to you, among others, and I quote:

"I told John that" -- beginning on the third line -- "I told John that the large investor who had temporarily taken their name off their approved list did not wish to meet with him to review the 1969 figures as they felt it would be awkward.

"John O'Herron guessed that the account we were referring to is Brown Brothers, and he has agreed not to make any out of the ordinary reviews with them so as not to jeopardize our relationship with Brown Brothers."

I ask you, Mr. Van Cleave, was it public knowledge that Brown Brothers, which had bought as much as 15 percent of the outstanding commercial paper of Penn Central, had removed the Penn Central name from its approved list for purchase?

A I don't know.

THE COURT: What does that have to do with this lawsuit?

MR. STITT: If I may just ask one following question.

Q Did Goldman, Sachs disclose that information to prospective purchasers or existing holders of Penn Central paper?

THE COURT: What difference does that make to this lawsuit?

MR. STITT: Because, your Honor, we contend that that would have been material information --

THE COURT: If some purchaser of this paper from Goldman, Sachs decided not to buy it any more? Supposing the plaintiff decided not to buy any more. Was Goldman, Sachs supposed to tell everybody in the world that Franklin Savings Bank wouldn't buy Penn Central paper any more?

MR. STITT: I think that the decision of Brown Brothers Harriman, with its history and reputation, history in railroad financing --

THE COURT: I disagree. Next point.

Q Do you know of any such disclosure, Mr. Van Cleave?

MR. PIEL: Objection.

THE COURT: I don't know what you are going through it for. I am not going to give it any weight.

Q Mr. Van Cleave--I believe this will be the final item of my cross-examination, your Honor -- I believe you testified this morning that on or about March 2, 1970, the inventory level of Penn Central commercial paper at Goldman, Sachs was approximately $9,000,000. Do you recall that testimony?

A I see by the exhibit that it is $9,000,000, yes.

MR. PIEL: That's Exhibit CW.

Q Was that a position that you permitted to lay for that night, a decision which you made, Mr. Van Cleave?

THE COURT: What's that?

MR. STITT: Strike that.

Q Did you have a conversation with Mr. O'Herron or anyone else from Penn Central concerning this $9,000,000 level and the fact that it was over the $5,000,000 limitation?

A I don't recall.

Q Is it true that you permitted the $9,000,000 limitation on your own in view of the fact that only $250,000 of paper would be maturing the following day?

A I don't recall.

Q I am going to call your attention to Defendants' BI for identification, listed at Page 106 of the pretrial order. It is described, and I quote:

"Documents headed 'Commercial Paper - Weekly Summary' Maintained by Lepley for Years 1969 and 1970."

I am going to direct your attention, Mr. Van Cleave --

THE COURT: What are you referring to?

MR. STITT: The page for March 2, 1970, and a handwritten notation on this document.

THE COURT: Is this marked for identification?

MR. STITT: Yes, sir. Defendants' designation, Exhibit BI. Your Honor will find it listed in the pretrial order at Page 106.

THE COURT: You are missing my point. It is marked for identification on this trial so that when you hand it to the witness you tell him what you are talking about and the court reporter knows what you are talking about, and if the case ever goes on appeal, the Court of Appeals will know what you are talking about. That's what I am talking about.

MR. STITT: Yes. It has been designated BI.

MR. PIEL: Are you now designating the entire document or just that page?

MR. STITT: My question would be just to this particular page.

THE COURT: It is only being marked for identification.

Mr.piel: I don't care, mark the whole document BI for identification. That's our designation of it.

THE COURT: Mark it BI for identification. The whole document. He can refer and the record will show what page he is talking about.

(Defendants' Exhibit BI was marked for identification.)

Q I call your attention to the page labeled "Monday, March 2, 1970," and the handwriting as follows:

"Goldman, Sachs is not supposed to go over $5,000,000 in inventory, per John Van Cleave from J. O'Herron -- Van Cleave is doing the 9,000,000 on his own in view of only 250,000 tomorrow."

Then there is an asterisk, "Inventory $9,000,000" also.

Does that refresh your recollection as to this occurrence?

A I don't particularly -- I don't remember this particular instant, but there is nothing strange about it because we had the guideline.

MR. STITT: Your Honor, I am going to offer this page labled, "Monday, March 2, 1970," from the document designated the Defendants' Exhibit BI in evidence.

MR. PIEL: Objection, your Honor.

THE COURT: Why?

MR. PIEL: Mr. Lepley is coming here and can identify the document and tell us about it.

THE COURT: I will withhold until he comes.

MR. STITT: That concludes my examination.

THE COURT: I gather this page shown to you indicates that you are really carrying twice as much inventory as you claim the guidelines --

THE WITNESS: Pardon me?

THE COURT: You were carrying nearly twice as much as the guidelines?

THE WITNESS: That's right.

THE COURT: Do you feel your discretion went that far? A guideline embraces a 100 percent differential?

THE WITNESS: Yes, I think so, with the magnitude of the outstandings, you can have maturities of 10 to $20,000,000 on a day, and the swings can be very, very large.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. PIEL:

Q With regard to Plaintiff's Exhibit F-89, that Mr. Stitt questioned you about, which is the promissory note, will you look at that? First of all, I think it would be of help if Mr. Stitt can produce for us the original note that he is bringing the suit on.

Can you do that?

MR. STITT: I will endeavor to comply. I do have a copy which I will show my adversary.

MR. PIEL: We have a copy.

Q I will ask Mr. Van Cleave if you had the original whether the original would answer the question, do you know whether or not the signature J. H. Shaffer on the right-hand corner of that document is a facsimile signature?

A I can't really tell from the copy, but quite a few of the companies did use facsimile signatures.

MR. STITT: I believe that was incorporated in the question I put to the witness on cross.

THE COURT: That doesn't mean that's true.

MR. STITT: That's true.

Q What was the practice, if you know, with regard to the way in which notes of Penn Central Transportation Company in this form were filled out with maturity and amount when Goldman, Sachs was buying a note from the railroad with the intention of selling it to somebody else?

A The notes were lodged with the bank in blank, and then the bank filled out the details, countersigned the notes and delivered them versus federal funds to Goldman, Sachs & Company.

THE COURT: You mean in blank, but with the authorized signature of Penn Central attached to it?

THE WITNESS: Yes. A better way to say that would be to say blank signed notes.

Q Blank signed notes lodged with the bank?

A Yes.

Q But they were not effective to be delivered or negotiated until countersigned by Morgan Guaranty, that was the protection on having blank notes around, is that right?

A That's correct. They are not valid unless countersigned.

THE COURT: Referring to Exhibit F-89, I would gather that it would make no difference whether Shaffer's name was original or a copy, as long as Morgan Guaranty authorized what it says, countersigned for authentication.

MR. PIEL: I agree with that, your Honot. It makes no difference. The only point is, and the witness has now established the point, whether by facsimile or hand, they had been presigned at some unknown previous time and lodged with the bank to be available for delivery by the bank upon the bank's countersignature.

Q Again, this is just a point of being tidy, and I think maybe it is already in here, but briefly, let me run through this and see if we have it straight.

When Goldman, Sachs acquires a given note, and we will say this same note, F-89, March 16, 1970, from

Morgan Guaranty, it does so, I believe your previous testimony was, at about 2:00 o'clock or after the close of the selling day.

A That's correct.

Q And Morgan Guaranty delivers that note to Goldman, Sachs against Goldman, Sachs' release of payment for it from Goldman, Sachs' federal funds account with Morgan Guaranty?

A Yes.

Q And that amount is immediately credited to the federal funds account of Pennsylvania Transportation Company with Morgan Guaranty?

A I would assume so, yes.

Q That would be normal procedure?

A Yes, it would be.

Q Upon the delivery of the note to Goldman, Sachs, it then belongs to Goldman Sachs no matter what Goldman, Sachs may do with it later, whether to hold it in inventory for an extended time or sell it to someone or at some point persuade the railroad to take it back, but in any event, from that time on, from that moment on, that note belongs to Goldman, Sachs, is that true?

A True.

Q Then at a later time that day, at about 3:00

o'clock, nearer to bank closing time, a Goldman, Sachs messenger now will be taking it to the Chemical Bank for the account of Franklin Savings Bank and delivering it to Chemical Bank as custodian for the savings bank or the savings bank trust company, is that correct?

MR. STITT: Your Honor, I object to the leading.

THE COURT: It is all in the record now. What difference does it make?

A That's correct.

THE COURT: The answer is yes, it is all in the record.

MR. PIEL: I wasn't clear that the record correctly showed the sequence.

Q I have one other question. It appeared from Mr. Stitt's reading this morning that on your deposition in June, 1972, which you signed in August, 1972, you testified that you did not recall any instance other than in the case of Penn Central Transportation Company where an issuer had taken back notes from your inventory to relieve your inventory.

MR. STITT: If your Honor please, I thought I stated that it appeared to me that it had been signed on August 20, 1973.

THE COURT: '73 is the date you put in your question. What is the fact?

MR. PIEL: The date of the signature? I accept Mr. Stitt's statement. He has it in his hand. I was just wrong in my recollection as to when it was signed.

Q You also told Mr. Stitt that subsequent to your deposition, on reviewing files and records you saw that your recollection on your deposition had not been correct, that in fact there had been other instances, did you so testify?

A I did.

Q When did you make that review that corrected your recollection?

A Just recently.

Q Had you made it at the time you signed your deposition?

A I had not.

Q I show you Defendants Exhibits EV and EW marked for identification and ask you if those two memoranda were among documents that you came upon in the course of that review?

A Yes.

MR. PIEL: Your Honor has previously excluded these based on Mr. Stitt's challenge to Mr. Van Cleave's testimony. I respectfully re-offer them.

MR. STITT: Your Honor, I wo not press any objection.

THE COURT: All right.

xv (Defendants' Exhibits EV and EW were received in evidence.)

MR. PIEL: Those are all my questions, your Honor. Thank you.

THE COURT: You may step down.

(Witness excused.)

MR. PIEL: If your Honor please, the defendant calls George Doty.

GEORGE E. DOTY, called as a witness by the defendants, having first been duly sworn, testified as follows:

[illegible]CT EXAMINATION

BY MR. PIEL:

Q Are you a general partner of Goldman, Sachs?

A I am.

Q Since what date?

A January 1, 1965.

Q Will you please briefly tell us your educational background prior to your first gainful employment?

A I started out in Blessed Sacrament Academy, and then graduated from Collegiate School, Fordham College, with a B.S. degree in 1938, Columbia School of Business, M.S., 1939.

Q That was a B.S. degree in business administration?

A Yes, sir.

Q Will you summarize your subsequent employment?

A I was working for the City at the time I got my-- graduated from college. Ithen went to work for Price Waterhouse, and from there to General Motors, into the Navy, came back. I went into an accounting firm, Richards & Ganley. In 1948 I joined Lybrand, Ross Bros. & Montgomery, as it was then known --

Q Now it is Coopers & Lybrand?

A It is Coopers & Lybrand now. I stayed there until 1964, December, I think it was, when I came to Goldman, Sachs.

Q Were you at Lybrand about 17 years?

A Yes, sir.

Q Did you become a senior partner of that firm?

A Yes, sir.

Q Before you moved to Goldman, Sachs?

A Yes.

Q Did you enter Goldman, Sachs as a partner?

A There was a one-month interregnum while they got to change their partnership agreement, yes, sir.

Q In the Lybrand accounting firm, what areas of responsibility did you have as a senior partner?

A Well, I was basically responsible for the firm's financial -- clients with financial orientation banks, investment banking firms, stock brokerage firms. I had a variety of other responsibilities, but that was a significant area of specialization.

Q Were you in charge, among others, of the Goldman, Sachs' audit?

A Yes, sir.

Q As a result of that, they invited you in to partnership?

A I hope so.

Q Let's say following that?

A Yes, sir.

Q What responsibilities did you assume when you joined Goldman, Sachs in 1964?

A I became what is either defined as the administrative partner or the managing partner at the time I joined the firm, and I still hold that role.

Q You still have it. About the same area of responsibility?

A Yes, sir.

Q Will you just sketch that a little bit, what that amounted to, overall, what it has amounted to?

A Most of our partnership at the time, and it is largely so today, have -- the individual partners have orientation towards the clients in terms of our various service activities. My responsibilities are: one, to coordinate the gaps between them, and, two, I was directly responsible for all the operation of the firm, executing the transactions which were contracted for with the various clients, providing whatever kind of support the firm -- what we call producing departments required. It was basically coordination, personnel, legal, accounting, that sort of thing.

Q In addition to your present position with Goldman, Sachs, you are also a trustee of Fordham University?

A Yes, sir.

Q And you are President of the Board of Trustees of the Collegiate School?

A Yes, sir.

Q Are you a member of the American Institute of Certified Public Accountants?

A Yes. I am a director.

A You are a director of that Institute?

A Yes.

Q You have other offices in that organization?

A I have. Right now I guess I am Chairman of the Investment Committee. I think I have been Chairman of Professional Conduct or one thing and another.

Q You have been Chairman of the Committee on Professional Conduct?

A I think I misspoke there. In the American Institute I have been a member of the committee. In the New York State Society of CPA's I have been the chairman for a number of years, or I was. I am no longer.

Q During the period 1968 and 1970, did you have responsibilities in relation to the commercial paper department?

A Yes, at two levels. One, the note and discount department which executes their transactions reports to me.

Secondly, any inventories which they may acquire, we have to finance, people who report directly to me have to finance.

Thirdly, anything they do in terms of -- or want to do in terms of adding or subtracting personnel, changing their compensation, is something with which I would have some responsibility. Other than that -- the question of the total inventories that they may carry is something which has to be coordinated with me.

I am not sure that -- there are a lot of other things, but those are the major areas of our contact.

Q Who arranges the borrowings necessary to pay for commercial paper in inventory?

A People who report to me do, or I do. Really I don't personally do it. I have people under me who do that.

Q They do it under your direction?

A Yes, sir.

Q That's not the note and discount department?

A No, that's a separate function. Tha's what we call money management.

Q That's a money management group?

A Yes. There is a very close coordination between the note and discount department, the securities cage and the money management group. Actually the money management group is physically in between those two other groups.

Q All those operations report to you?

A Yes, they do.

Q Does that apply to the financing of inventories other than commercial paper?

A Yes.

Q What other inventories are financed by borrowings?

A Well, in '69 and '70 I guess we had the same as -- bonds, municipal bonds, U. S. agencies and treasuries, commercial paper, I assume there would be some Federal

National Mortgage Association notes, there would be a smattering of bank CD's, I am not sure, ADR's, whatever assets.

We might also have some commodities, some spot silver. I can't recall if we had it in 1969, but we might very well have had it.

Q Is all of that borrowing for purposes of carrying those several different kinds of inventories, does that have to be coordinated and managed as an overall problem?

A Oh, yes, yes, sir.

Q Were the loans which Goldman, Sachs took out to pay for the commercial paper it acquired in inventory collateralized?

A Yes, sir.

Q By what collateral?

A Normally it would be collateralized by the commercial paper, either the commercial paper in inventory or commercial paper which had been sold for future delivery. It is possible that we may also have from time to time collateralized a purchase with securities. We distinguish -- commercial paper is one thing and securities we consider different.

THE COURT: Insofar as we are concerned, I gather that the commercial paper that was in the inventory was used to collateralize the loans that were made to finance the carrying of these papers?

THE WITNESS: Almost entirely, your Honor, but occasionally you may have a cross-over. Sometimes you may -- I was just trying to be complete with my answer, but that's the basic --

Q That's the substance of it?

A Yes.

THE COURT: I gather that if the rate you paid on the loan was less than the rate you -- less than the yield you were getting on the commercial paper, you were ahead of the game and when the rate went up on the loan over the yield of the commercial paper, you were losing money?

THE WITNESS: That's right.

Q Before going on with some further questions about financing the inventory, I want to ask you a general question, and that is to, if you will, please, we have had something on it, but I would like your contribution of information on this point: What is the difference between bank lines and bank loans with particular reference to their availability to borrowers in times of tight money and rising rates?

A If I talk about our own experience, we are one of the largest borrowers there are. At that time we borrowed maybe $400,000,000 a day, 300 to $500,000,000 a day, and it has always been in that range. We do not use bank lines. All bank lines cost money.

The degree of assurance that you have that you can use the bank line costs more money. There has been a lot of testimony about kinds of lines, but, one thing, all of them cost money and the ones that are firmest cost the most money. We never felt on the one hand we could afford that; and, secondly, our experience with banks is that they hesitate to make a forward commitment, which is a call-out. The line is a call on a bank, if they have a lot of outs but nonetheless there is some kind of a call..

You are much better off borrowing from them, because that is a transaction -- we have found we are much better off borrowing from them because they have the money, they can make the loan, they start to earn a rate of return immediately on the money they lend you and they don't have some commitment that can be used against them.

I don't remember now, you talked about in the change of rates, when money is easy, banks are all over you to open a line, they want to give you a line and try to cultivate business with you, they come in from out of town to tell you how much they would like to do business. The lines vanish when money gets tight. That's how our commercial paper business tends to expand in tight money, is the banks tend to say to the fellows, "Why don't you use the commercial paper market," and we get to see a lot of people using commercial paper markets where the bank doesn't want to either give a call or if it has -- they all have more lines out than they have money, and they don't want to have those lines exercised, and they may not have any particular way they can turn down an old and valued customer, so their inclination is to push them over into our market. Always in tight money times we see people who have bank credit available, but the banks are reluctant to do it, and they won't give you a call.

We never have had any trouble borrowing money. In the toughest of times you would go to the bank and as long as they believe your credit is worthy, you can have it. All of our loans are call loans, in effect. They are demand loans, I should say. I call them overnight loans. We have two kinds, overnight and day loans. I am getting far into the subject, I am sorry. I get carried away here.

THE COURT: If you keep it up, I may join the business.

THE WITNESS: It is a pretty good business.

THE COURT: Sounds pretty good to me.

THE WITNESS: You see, we have to --

THE COURT: As long as you have a spread in your favor, you can't lose, can you?

THE WITNESS: We never inventory, your Honor, for the -- to carry. That's a very difficult game to play. The only reason we have inventory is to balance the thing between supply and demand, the supply of paper, what-have-you. Trying to make money on the carry is a tough game. From a managerial point of view, if -- to permit that department to start to speculate on interest rates, I assume they will be wrong as often as they are right, and I am pretty sure that we would not make out.

THE COURT: You mean why should that department be different from any other department?

THE WITNESS: So we would have a very firm rule on these fellows, that we are not interested in what they really think about rates. We are just interested in buying paper at one rate and selling it at a more attractive rate and let's make the difference.

THE COURT: In other words, that's where you hope to make your money, not in the spread between the yield on your inventory paper and the rate you have to pay on the borrowing?

THE WITNESS: Your Honor, in all securities, your inventories always get bigger when the rate is against you, becase as the rates are moving against you, people are selling it faster than you can get rid of it.

THE COURT: That's why they come to you, to get rid of it?

THE WITNESS: See, when the rates are going the other way there is a great anxiety to buy stuff -before -- take it off your hands, and the issuers who know that rates are moving that way are a little slower to sell you the paper. You can not make the balance, as a practical business matter, I don't think we have succeeded, and we try to stay out of that game, and you keep your inventory just as lean as you possibly can, and then hopefully if you do enough business you will make enough money. But if -- the odd dollar that you can make by trying to get a favorable carry, it just is too hazardous.

We have a second factor in there, which is, of course, the size of your loans, but that gets into this whole subject. If you get into too much inventory, you get into a position where you are debit heavy, and the question of how you look to your banks is a question that bothers us-- not bothers, but is of concern to us.

THE COURT: Go ahead, Mr. Piel.

BY MR. PIEL:

Q Briefly, the compensation that a bank receives for a loan is, I take it, larger than any compensation it would get for merely agreeing to have a line outstanding?

A Yes.

Q Does that affect the bank's greater willingess to make a loan when money is tight than to tie up money that would be tied up getting the lesser compensation, the line compensation, while at the same time being committed not to lend it to somebody else?

A They would rather make the money sure which they make by lending to you than to give you some kind of a call on them where there is no current earnings for them or at least where the current earnings is smaller than they could otherwise lend that money out for.

Q You have said what I awkwardly was trying to ask. You mentioned that your total inventories of all your security positions that you borrowed on, carried, was running 300,000,000 to $500,000,000 at a time?

A Yes, sir.

Q Of that amount, the commercial paper proportion can be seen by looking at the commercial paper inventory, is that right?

A Yes, plus a little that may not appear there. I don't know what kind of a run-off, but we have some that sold for future delivery that may not appear in your inventory sheet.

Q It may not appear in the inventory sheet which is kept for the purpose of showing what's available for sale?

A Right.

Q In comparison with that volume, borrowing on a recurrent daily basis, what was the size of your partners' capital, your partnership capital?

A In 1969?

Q Yes.

A I would say $45,000,000, give or take a couple of million dollars.

Q Will you please explain to the Court how you were able to obtain loans for ten times your capital when you had no established -- you had not established any lines of credit with the banks?

A We are a known figure in the marketplace, we have had dealings with banks for many years, we have a reputation, I assume, of being credit-worthy. The banks in their own minds, whether you have a call on them or not, the bank has internally a limit of what they will lend you. In our case it is normally the bank's legal limit, but somewhere they have a policy in the bank for any borrower what they will lend, and that doesn't imply any commitment to lend them that, but they have, after all, what they call their legal limit, which is ten percent of capital and surplus. I don't think that's legally the exact amount, but that's what the banks call it. That would be the amount that they would be willing to lend to Goldman, Sachs in almost every case, if money were available. If money is not available, they won't lend you anything. I am not sure I have answered the question, Mr. Piel.

Q Is what you were saying that essentially it is a matter of enjoying the confidence of the banks, and you as an institution, their satisfaction with the collateral you put up?

A Right.

Q How is the rate determined that you pay for these loans?

A Well, there are two different sets of rates at which we borrow from banks. On stocks and bonds we borrow at the broker's rate. On commercial paper and CD's in general --

Q Certificates of deposits in banks?

A Certificates of deposits, we will borrow at the government dealer rate. There are shadings on both sides of those rates, but those are the two basic rates we were from. Many banks will not lend at the government dealer's rate to finance commercial paper inventories. Some will lend you on commercial paper at the broker's rate, others will lend it to you, lend you on commercial paper, if you really press them to it, but there are several different competitive factors that play in here. The basic rates are government dealer rates which finance the commercial paper and which in normal times is a lesser rate than the broker's rate, and then the securities end is lent at the broker's rate. That's from banks.

Q Government dealer rate refers to the rates charged dealers in government securities?

A That's correct. It is the money market instrument rate. It is called the government dealer rate.

Q Penn Central commercial paper, to the extent that it was in your inventory or being held by you for future delivery on a sale already made was included in the collateral put up for these loans?

A Yes, sir.

Q So that if for any reason, a disaster or anything else, Goldman, Sachs failed to retire the loan as expected or was required by the bank, the bank would have to have recourse to the collateral?

A If we didn't pay the loan off, yes.

Q And to the extent that Penn Central commercial paper was included in the collateral they accepted, they would have to have recourse to that collateral?

A Yes.

Q In that period, 1969-1970, did the banks impose any limits on the type or amount of collateral they would accept as pledged?

A Yes, from around -- I date it in my mind from the time of Ira Haput, around the middle 1960's --

Q You are referring to the failure of a brokerage house?

A Yes, I am sorry. Prior to a certain date, which is vague in my mind, the banks didn't look very carefully at the collateral. Then in the middle 1960's they started to create guidelines for their own uses as to how much of any one name they would be willing to take in a particular loan as collateral for a particular loan. It varied very widely and it is not uniform as between banks, and some banks, if they have such restrictions, we have never heard of them, but others have made known to you, known to us, out of our list of issuers, which they know, that they take 5 or 10,000,000 of any name or 3,000,000 of any name and 2,000,000 or 1,000,000 of any of these other names. They grade them in some way. We have to live inside of those requirements.

Q Did those requirements, whatever they were, come to your attention at the time, you personally?

A Oh, yes. Yes. We tended to resist people giving us such requirements, so I would hear about them, yes. I might be in the discussions, but yes, they did.

Q Do you have a recollection at any time of any bank imposing a limitation on Goldman, Sachs as to the amount of Penn Central paper that they would take in as collateral for your overnight loans?

A As distinguished from any other prime name?

Q Yes.

A No. They might have said 5,000,000 of any name is the most they would take, but they wouldn't pick out Penn Central.

Q There is no instance that you can recall?

A No, sir.

Q Will you identify for us, please, what the principal banks were from whom you borrowed money pledging commercial paper as collateral?

A The banks which would give us the dealer rate. The Chase, Irving --

Q I think you better give us the full names, if you will.

A The Chase Manhattan Bank, the Irving Trust Company, the Marine Midland Grace, I think it is called, Continental Illinois in Chicago, First National of Chicago, Northern Trust Company.

Q Is that Chicago also?

A Yes, that's in Chicago.

The Valley National Bank in Phoenix would do a substantial amount of repos, which really corresponded to this type of financing. The Morgan Guaranty Trust Company would lend on paper, but at the dealer rate.

Q At the broker rate?

A I mean at the broker rate. I think on occasion, you know, on occasion any of the banks would probably lend to us on commercial paper if we asked them, but it is a sign of weakness to have to ask them for a less favorable rate, so you tend to -- you tend not to do that.

Q You tend to stick with the banks that give you the dealer rate?

A Yes. Occasionally you can say to a bank late in the day, because the mechanics of this operation are very difficult, and you can say to a bank late in the day, "I am hung up and I'd like to have you accomodate me and take paper," but you couldn't make a practice of that for a bank that didn't want to lend on paper without losing credibility with them.

Q To refresh your recollection, what about Chemical

Bank' New York?

A That's right, Chemical would lend us on paper, too.

Q And Manufacturers Hanover?

A Manufacturers Hanover, yes, has always been willing to lend. Their rate is a little less favorable, it is somewhere between the dealer rate and the broker rate. Yes, they would.

Q Is that a special rate for you or is that just their practice?

A No. You see, banks tend to regard commercial paper as a slightly competitive instrument, and they tend to take a little edge off you, if they can.

Q During late 1969 and early 1970, there was a limit set in Goldman, Sachus, a limit or guideline, or you give it the right name, with respect to the amount of commercial paper which the Goldman, Sachs commercial paper department was permitted to take into inventory?

A Yes. They had discretion to take in up to $250,000,000, and if they wanted to go beyond that for any reason, they had to come to me and get a blessing on it.

Q Who imposed that requirement?

A I had it blessed by the management committee in order to make -- clarify the fact that -- the management committee adopted a $250,000,000 guideline or limit or what-have-you, with the understanding that I and, if I were there, Gus could authorize -- Gus Levy could authorize whatever we thought was prudent.

Q You made the recommendation for this requirement?

A Yes, sir.

Q Will you explain why you felt it desirable to make that recommendation to the management committee?

A The sales of commercial paper and their outstandings have been going up quite substantially. The outstandings have been as low as $1,000,000,000 a few years ago, and these things had gone up to the point where they were getting 4 or $5,000,000,000, and Bob Wilson and his associates would like to have had inventory permissions which would go, say, ten percent of their outstandings on the theory that they needed that much room to turn around in, because volume of business and the notes were getting shorter, and the mechanics of selling were difficult. There were two reasons we couldn't have that.

One was that the firm itself, everything that we borrow, except on governments, which was a very small portion of our business, has to fall inside a bank's legal limit, whether it is securities or whether it is commercial paper. If we started to borrow 4 or $500,000,000, which is what came along from about 1966 or '7 on, we ran out of the total legal limit of the New York banks from whom we used to deal. If we add them all together, their legal limits, you didn't get to $500,000,000.

So we then had to go to Chicago and the West Coast and elsewhere, and as these prospects of expanding demands for finance inventories -- they were confronted with some very difficult problems, both from the point of view of our own credibility, and, secondly, the mechanical aspect. Since we pledged collateral to all of these loans, and since you can't deliver -- there is no fungibility in this thing -- somebody wants a $1,000,000 note of Penn Central, you have got to find a million dollar note of Penn Central wherever it is, and you have to releave it from the lien to deliver it.

The mechanics of this become extraordinarily difficult. So I had two reasons for not being willing to see the firm get itself so extended, just from a credit point of view of our own financial statement, and, secondly, from the point of view of the physical problems which were imposed. The became, you know, the mechanics of this procedure with geometric difficulty. If you have two pockets, you could handle the thing; if you have five you may be able to handle it. If you have 50 or 100, it gets to be just a blizzard of paper. Inside of the time that wewere working on it, which I think has been testified to here, the last order was taken at 12:30, they may increase that for a few minutes because that's only 9:30 out in California, and the time we have to start making these deliveries around, we have to get it out of inventory, which means we have to pay for it, get it out, match it up with a bill and redeliver it with the bill and get paid and redeploy that money, it is just a very difficult thing.

If that is compounded by having to hunt and peek for where the paper is -- so I was fairly firm. As a matter of fact, I jumped all over him on his inventory, and I suppose the reason the management committee was put on the line there was yust to make it clear where the game was going to be played.

Q Now I'd like to show you Plaintiff's Exhibit 56, which is the so-called blue book study that was formally published in March, 1970. Was there an event in the year 1969 that was called Sterling Forest Conference?

A Yes, sir.

Q Before we come to Exhibit 56, what was the Sterling Forest Conference?

A Sidney Weinberg, as I remember, died in July, 1969, and we thought -- he had been the senior partner of the firm, and we thought it would be desirable to have a firm meeting for a couple of days away in the fall to sort of coordinate one what our firm viewpoint was on a number of things. I believe I was the sponsor of that. It was the first time we really had a partnership meeting just to discuss the firm in generalities with all the partners.

Q At this point had Mr. G. L. Levy succeeded Mr. Weinberg as head of the firm?

A Yes.

Q Was there any connection between that conference and the fact that this report came along later?

A Yes, sir.

Q Will you explain the connection?

A There was some criticism of the commercial paper department by other partners in the firm, that it involved too much use of our resources and too many talented people for the profitability of it, and there was some --

Q Too much work for too little pay?

A Yes. There was another criticism that was in there which was that it was an embarrassment in a sense that the rates that they were offering to issuers were less attractive than the rates being offered to issuers by some of our competitors, principally A. G. Becker, it could have been somebody else, but that's the name that comes to my mind.

So it was not only too much work for too little reward, but there was some feeling that it was not helpful in terms of corporate relationships, because the rates were wrong.

Q Did you have an understanding of why your offering rates or selling rates in the marketplace tended to be a little higher than Becker's or others?

A Well, this is a spasmatic thing. The commercial paper department in a sense had previously blamed that largely on me, in a way, because when you confine their inventory to a number, a finite number that you can't go above $250,000,000, without coming and getting permission, which is something theyobviously didn't like to have to do, then they wanted to buy more inventory. Of course, my view would be, "You can buy anything you want but you have to sell some of what you have got, to make room for what you want to buy," and the net result was that there was this great pressure, which I think George Van Cleave testified to, to move out the old inventory and to make room for the new inventory.

The result of that obviously is to increase the yield on the paper that you are selling, which means in effect that in offering to buy new paper you are affected by that and you are offering a higher rate to buy paper from your issuers than someone might who had no inventory and didn't have this problem. That's some of the background.

Q I am going to skip over this in here because I don't want to elicit from you what we already have gotten from Mr. Van Cleave, but let me ask you this: Did the consideration of those discussions at the Sterling Forest Conference lead to the setting up of the study that eventually came out in this formal manner in this report?

A I believe that was the sequence, yes.

Q While that study was going on --

A Could I add a word of explanation?

Q Yes.

A A fellow named Hy Weinberg who worked for me and who has since become one of our partners, was at work on this inventory question for at least a year before that on my account in trying to project what our borrowing level would have to be, so when you say did this come out of that meeting, I'd have to say yes, it did come out of that meeting --

Q But with a background of previous study?

A Oh, yes. There was a lot of work done.

Q Mr. Hy Weinberg is one of the authors of this report, according to the flyleaf, is that right?

A Yes.

Q While this data that Mr. Weinberg was developing and then the study that these other named on the flyleaf joined withhim in conducting was going on, and they were beginning to get the data to study and discuss, during that period, in the latter part of 1969, did you discuss these matters with Wilson and Van Cleave from time to time?

A Yes, I think we did.

Q Did you touch on the questions of loss due to mark-up of paper in inventory?

A Well, that was my particular beef, my particular complaint with them, yes.

Q And negative carry loss?

A Absolutely.

Q And the relationship of that to the aging of paper in inventory during the rising rate period that went on there for so long?

A The difficulty -- yes, sir. The difficulty with the inventory is that when we got it, we couldn't get the salesmen to sell it. So it was mechanically so difficult for a salesman to sell a piece of paper in inventory as opposed to his problem in selling a tap issue item, that he wouldn't sell what is in inventory.

I think someone probably described the thing, but we had daysin which there were very large sales on which nothing from inventory moved, and, you know, it is --

Q You mean with respect to the paper of a particular issuer?

A Of any issuer, yes.

Q Of any particular issuer?

A Any, yes. You see, they didn't know -- in earlier times when the buyers at banks would take due bills; you could sell inventory and deliver a due bill and then find the inventory and redeem the due bill, but as banks became disenchanged with due bills, you then had to find a specific note and deliver it, and for a salesman to be able to find out whether that could really be delivered the same day or not, it was just more trouble than he wanted to work with. So they had -- in order to move the paper, they had to push a way at the salesmen on specific names, but our problem, to my observation, was that this became a final resting place for these notes rather than just a way station.

Q In other words, in the case of the XYZ Corporation, there would be large sales of that corporation's notes on a particular day on a special order basis while a large amount of its notes sat in your inventory?

A There could be, yes.

Q I show you Defendants' Exhibit FA for identification.

(Defendants' Exhibit FA marked for identification.)

Q Was this a report to you from Hy Weinberg on this subject of aging in inventory?

A Yes, sir.

Q Dated November 21, 1969?

A Yes, sir.

MR. PIEL: I offer it in evidence.

MR. STITT: If your Honor please, this exhibit was not produced on discovery, it was not listed in either of the pretrial orders that we have had in this case. I question its relevance, I haven't had a chance, really, to review it.

THE COURT: You can look at it overnight. You can offer it again tomorrow.

MR. STITT: I received it this morning for the first time.

MR. PIEL: May I ask an additional question about this?

Q Mr. Doty, when did you locate this report?

A Oh, within the last two months.

Q When did you first bring this to the attention of counsel?

A The day before yesterday, I think.

Q Why hadn't you brought it to the attention of counsel before?

A I didn't realize any one was saying that we had inventory four days, on an average of four days in inventory. I think I heard someone say that the average time of inventory was four days, one of our own people, and I thought that was gilding the lily, and so I went and asked the comptroller if he remembered this, and dig me out the copy.

Q He dug it out at that point?

A Yes.

Q So this was a recent recollection that you produced this document?

A Yes.

THE COURT: I will let Mr. Stitt look at it overnight.

MR. PIEL: Very well.

Mr. Stitt, I take it, conceded the authenticity of it so I don't have to recall Mr. Doty for examination on that subject, it is a matter of relevance, Mr. Stitt?

MR. STITT: I believe Mr. Doty has by his testimony authenticated his receipt of this document on or about the date indicated.

Q Now, a final general subject. I show you

Defendants' Exhibit CV for identification.

MR. PIEL: This document, your Honor, is listed in the pretrial order, there has been no objection to it, and accordingly I offer it in evidence.

MR. STITT: Your Honor, what my adversary says is correct, as confirmed by Page 119 of the pretrial order.

THE COURT: All right, it is in.

(Defendants' Exhibit CV was received in evidence.)

MR. PIEL: Your Honor, this is another computer run from the same data bank that is represented by the master computer run CU, and which by appropriate instructions to the computer turned out here a list of all of the purchasers of Penn Central commercial paper from Goldman, Sachs, arrayed by the last day of purchase by that purchaser.

In other words, it does not show all the purchases of each purchaser, we can find that in the big run, but it does not repeat the names of purchasers, and it arranges them in the inverse order of the last date of their purchase. In other words, the last person who bought a note from Goldman, Sachs, the last date of his purchase was the Commercial National Bank.

THE COURT: And its name would not appear in this run again, is that it?

MR. PIEL: That is right, but the fact that it bought on April 2, 1970 shows it was a very late buyer. So we go through the list, and at the end of the list there is Colonial Bank & Trust Company purchasing a note on March 3, 1969, and that means that was the last day that company bought that note. That is just to explain the way it is arranged. Rather than being arranged alphabetically or otherwise, it is to show the people that Goldman, Sachs sold to most recently, so to speak, before the Penn Central filing for reorganization.

Q Mr. Doty, I have previously asked you to flip through this and acquaint yourself with it, and I want to ask you whether this list contains the names of purchasers of Penn Central paper from Goldman, Sachs who, in addition to purchasing paper from Goldman, Sachs, also were banks lending money to Goldman, Sachs on its inventory positions or clients of Goldman, Sachs for brokerage purposes or for investment banking purposes, or for any other purpose, and if you will be so kind, I won't ask you to go through it and list them all, but I'd like you to start out and acquaint us with some of the purchasers of this paper from that point of view.

A You just want me to hit a few big ones?

Q Yes. Some of the big ones who were late purchasers, we will say.

A Manufacturers Hanover I see there, Manufacturers Hanover is one of our principal lending banks, and it is a very large brokerage customer. Do you want me to estimate the commissions on this?

Q I don't think we need to go into dollar amounts. When you say very large, what's the order of magnitude of the brokerage income in a year?

A More than $250,000. Probably $500,000.

Q Manufacturers Hanover would be buying stocks and bonds in the market through Goldman, Sachs as broker, is that it?

A That's right.

Q Enabling Goldman, Sachs to earn brokerage commissions for servicing accounts handled by --

A They would also buy securities from us on underwriting.

Q That would come under the brokerage income?

A Right. The First National Bank. That account number, I believe, is the First National Bank of St. Louis, which is our largest customer in the St. Louis office for securities. They are an affiliated trust company.

United California Bank, which is the next item, we were in their building at the time in Los Angeles, and were the investment bankers for their parent company, Western Bank Holding Corporation. They are also a very large security customer of ours.

The Wells Fargo Bank, which is a large bank in San Francisco, is a very important security customer, not on the same order as the Manufacturers Hanover, but a big customer. They are also a bank of account for us.

The United States Trust Company, which is the last item on that first page, is one of our biggest security customers. We are a depositor in their bank, and in the past they have been a lender to us, but their principal contact is they are one of our most important brokerage customers.

The Dreyfus Fund is a large mutual fund, and that is a very big buyer of securities. They don't lend money to us, but they are -- in some markets they are the biggest buyer or seller of securities around, and they are very improtant to us.

The Home Insurance Company, of course, we do securities business with them. We also do private placements of debt for some of our investment banking companies.

Manufacturers Bank & Trust Company, a Detroit bank, is a bank that lends us on drafts, as I remember, and they are a good-sized security customer.

Putname Growth Fund down there, Putnam is a management company in Boston which has any number of mutual funds. It is easily the biggest or the second biggest securities customer of our Boston office.

Marine Midland was a lender to us of commercial paper. They are not a large security buyer, but they are a good customer.

The Mellon is the biggest security customer -- Mellon National Security Bank & Trust Company is the biggest customer of our Philadelphia office. Their commission may be up to $1,000,000 a year.

Bank of New York, which is the sixth item on that page, is a very big securities customer. They lend money to us, but their lending limits capital is small relatively so their major importance to us is that they are a very, very big customer of security.

The Israel National Bank I think I mentioned earlier, was a lender on commercial paper in the repo market. They are also a buyer of municipal securities from our L.A. office. They were at one time very active in the municipal market and a big account for us.

Chemical Bank, which is down here, is the bank that handles all of our -- much of our day-to-day expense accounts. They lend to us their limit on either securities or paper. We think we have a very close relationship with them. They are also a big securities buyer, although to my recollection, they are probably 2, $3,000, rather than a million.

New York State Teachers is the Teachers Retirement Fund, I guess, of the State, and they are one of the principal bond buyers around, I believe, and very important to anybody in our line of business. They are important to us.

On the next page I see the Comptroller of the State of New York. I suspect that that is the New York State Employees Retirement thing rather than the Teachers over here, but I am not sure of that. In either case the Comptroller, Mr. Levitt, is the principal figure in a couple of those things, the state fund, this is an important relationship.

THE COURT: All right, Mr. Piel, next question.

Q May I ask one more that I see right on this page, and that is Norton Simon, Inc.

A I didn't see that, but Norton Simon, that has been one of our big investment clients. My partner, Gus Levy, is a director over there, and we made acquisitions for them and public offerings. I didn't even think about it, I passed one or two investment banking clients here without thinking about it.

Q This exhibit shows that you sold them $2,000,000 worth of Penn Central paper on February 25, 1970.

A Yes, sir.

MR. PIEL: I offer in evidence two exhibits which are not objected to, PW and PX.

(Defendants' Exhibits PW and PX were marked for identification.)

MR. PIEL: Exhibit PW is a statement of the gross commissions earned by Goldman, Sachs & Co. from Penn Central and affiliated companies during the years 1968, 1969, and 1970.

Exhibit PX is a statement of the gross revenue from Penn Central and affiliated companies received by the syndicate department of Goldman, Sachs & Co. during the years 1968, 1969, and 1970.

MR. STITT: Your Honor, these documents are not listed in the pretrial order, but I have conferred with my adversary, and he has refreshed my recollection that these documents or copies thereof were given to us within the past, oh, week or thereabouts, by Mr. Graham of Sullivan & Cromwell, and my recollection is that I have advised him that I would not object to these documents on certainly authenticity.

(Defendants' Exhibits PW and PX were received in evidence.)

Q Apart from whatever Goldman, Sachs earned in handling commercial paper of Goldman, Sachs and the earnings of 27,000 or $28,000 from gross commissions from brokerage business over a period of three years on Exhibit PW, and a loss of $691 from transactions handled in the syndicate department, was there any other income benefit earned by Goldman, Sachs of any kind arising out of its relationships with Penn Central Transportation Company or Penn Central Company?

A Not that I know of.

Q Would you be likely to know of it if there were any?

A Yes.

MR. PIEL: Your Honor, I wish to correct my description of this Exhibit CV that we have been discussing because I didn't notice the cut-off date. I said purchases prior to the reorganization petition. That's not correct, because there was a cut-off date of April 2nd. There were purchases by these purchasers both before and after April 2nd. The purchases after April 2 appear individually at the appropriate date entry in the master computer run, which is Exhibit CU.

THE COURT: Why did you use April 2nd?

MR. PIEL: I think it was prepared for another case, your Honor, in which there was a purchase on April 2nd, and I didn't notice that.

THE COURT: All right.

MR. PIEL: That's all, thank you.

THE COURT: Are you finished with the witness?

MR. PIEL: Yes, your Honor.

THE COURT: How much cross do you have?

MR. STITT: Your Honor, I would say perhaps half an hour.

THE COURT: Instead of having a recess, can we go right along and see how we do a half hour from now?

CROSS-EXAMINATION

BY MR. STITT:

Q Mr. Doty, you testified about your contact with the commercial paper department. I ask you, are you the member of the management committee charged with the responsibility of supervising the commercial paper department?

A No, I am not.

Q That is Mr. John Weinberg, is it not?

A He exercises liaison over them, yes, he does.

Q Is he referred to in some context as the granddaddy to the commercial paper department?

A Well, it is not an expression that I have heard, no. He would be the fellow, if they had a problem that they needed weight brought in to bear to get straightened out, if they were being crowded by some other departments, he would be the fellow they would go to.

Q He would be the member of the management committee they would go to?

A If Bob was pushing them too hard, he is the one they would go to.

Q John Weinberg is not to be confused with Hy Weinberg, I take it?

A No, they are not related.

Q You testified about inventory. I ask you whether you personally ever directed the commercial paper department to limit the amount of any issuer's paper which they would inventory?

A Not by issuer, no. Just totals.

Q I ask you whether during 1968, 1969, or at any time up to, say, April 1, 1970, you had any contact with any financial officer of Penn Central?

A No, sir.

Q I ask you whether at any time during 1968 and 1969 and up through April 1, 1970, you read any of the blue sheets concerning the Penn Central companies?

A I don't know. If I am not on the distribution list, it would only be by chance. I remember none, Mr. Stitt.

Q In any event, you have no recollection of ever having read those blue sheets during those periods?

A No, I do not, no.

Q And you, of course, have no knowledge of what Goldman, Sachs did or did not disclose to the Franklin Savings Bank in connection with the purchase which is at issue in this litigation?

A No knowledge, sir.

Q Is it true that the management committee did not review the firm's credit investigation procedures during 1968, 1969, or through -- and up to April 1, 1970?

A The management committee as a group did not.

Q You mentioned bank financing of Penn Central and other commercial paper inventory during your testimony, did you not?

A Yes, sir.

Q Is it true that this was done on an overnight basis?

A Yes, sir.

Q The inventory would be parked with the lending institution overnight and you would take it back the next morning?

A The loans -- it is a little more complicated than that. Although they are called overnight loans, Mr. Stitt, you tend to leave it in inventory until it is sold. Probably you tend to leave it in the bank loan until it is sold, unless the rate by that bank is changed so much in relation to the prevailing dealer's rate that you find it worthwhile to pay the cost of moving it from one loan to another.

Q But you did refer to these as overnight loans, did you not?

A Yes, that means really they come due ever day. That is due the next day and the bank has a new look at it, and the rate they can apply changes the next day. There is no commitment on the part of the bank to permit that loan to stand, and we have an obligation, if the bank finds it inconvenient to carry the loan, to take it elsewhere.

Q As I understood your testimony, the banks did not reject as part of this package any Penn Central commercial paper as collateral during 1968, '69, or up through April 1, 1970?

A Yes, sir, that's my testimony.

Q And is it also true that the banks did not reject the commercial paper of any of the other issuers that were pledged during this period?

A It was called to my attention after a similar discussion earlier that there was one company that one bank did ask us not to send over, and it is unrelated to this, but there was a finance company that a bank on one occasion did ask us not to send to them.

Q During this period, '68, '69, up through April '70?

A Yes. That is a little different from testimony I have previously given, because it was called to my attention after that time.

Q But for this one exception, the answer would be that none of the banks raised any objection to any of this collateral during that period?

A No. They would set their rules up of what they would take or didn't take, and we would send over what they would take.

Q So Penn Central was not unique in this situation?

A Oh, no, sir. No.

Q You testified as to your thoughts concerning your opinion that inventory should be less, speaking of total inventory, and it is true, is it not, that Mr. Wilson felt that inventory should be increased, overall --

A The early point -- there is a time thing in here. Whenever Bob would come -- whenever Mr. Wilson would come to see me, it would be because he needed permission to get his inventory higher. He had no occasion to see me if he didn't need some relief from some restriction. During the early part of 1969, that was an active problem, because they wanted to go up to something on the order of ten percent of outstandings, and I was not enthused about it. Somewhere in the course of that time the message of negative carry had a profound impact on their thinking, and the studies that Hy Weinberg had done which tended to indicate that inventory did not move readily had that same impact on him, so that I would have to say, caught in the dilemma which he was in, he would like to have gone to all tap issues and have had zero inventory, but if he had to keep out the paper of a lot of companies and couldn't go to tap issue, then he would periodically have to come by and see me about getting inventory relief, which I think happened all through the first quarter of 1970. We were up to 300 some-odd million dollars there at one time in the inventories.

Q Let me just call to your attention this question and answer which you gave at Page 2764 of the Welch record, Mr. Doty:

"Question: You testified about a negative carry in discussions with Mr. Wilson. My question to you is, isn't it the fact that Mr. Wilson wanted more inventory or higher inventory ceiling, not less inventory?

"Answer: That is right, that was the bone of contention between us."

A In the context of the answer I have just given, yes, that is true.

Q There were varying opinions within the partnership as to the desirability of carrying inventory in the commercial paper department, were there not?

A I think we were all agreeed -- if you are talking about the partnership, if you are talking about the management committee, we were all agreed we didn't want any more inventory than we could -- I was going to say get away with, but the most inventory -- as low an inventory as we could operate our business on. There was a difference of opinion as to whether to achieve that result we ought to slight some of the lesser known companies, but I don't think there was any difference in the management committee about the total inventory, no, sir.

Q Did you receive a copy of Exhibit F-58, the memorandum from Mr. Whitehead to Mr. Levy, under date of April 28, 1970, it looks like?

A Yes, sir, I did. This is the one in which he states his views? Yes.

MR. STITT: I draw attention to the statement that copies were sent to members of the management committee under date of May 1, 1970.

Q You testified about Exhibit F-56, the report on the commercial paper department dated March, 1970. Do you have the original one before you, Mr. Doty?

A Yes.

Q I ask you whether that report was ever discussed by the partnership at Goldman, Sachs?

A It was discussed by the management committee with the fellows from the commercial paper department, but I don't think the report was ever discussed by the partnership generally, no.

Q Your recollection is that this report was not discussed by the partnership, isn't that the case?

A If by that you mean the whole partners assembled, the answer is yes, it was not discussed.

You know, can I make an addendum to that? I am pretty positive of that, but I don't remember if at Sterling Forest we gave people copies of this. I don't think we did.

Q The Sterling Forest meeting I thought was back in '69.

A That's right. I beg your pardon.

Q Just so the record will be completely clear, Mr. Doty, at Page 45 of your examination before trial, this question and answer, Page 45:

"Question: Did the partnership discuss the report of March, 1970?

"Answer: No."

A Same answer.

Q Did the partnership discuss at any time in 1970, prior to June 21st, the commercial paper activity of Goldman, Sachs?

A Let me respond in this fashion: The partnership has only one meeting a month as a group at which various departments report on their activities for the month in very brief fashion. I don't remember whether that started as early as 1970. I have a feeling that it may not have started that early, but if it did, there might have been some report. There would be no discussion, really, and as far as -- I can't even say that -- there had been no discussion of it. That's the only meeting we had. Once a month we had a meeting. They said they had a good month or a bad month, but --

Q So, prior to June 21st, your recollection is that the partnership had no discussions concerning that subject?

A That's right. I just got myself a little garbled. That was about the activities of the commercial paper department or the Penn Central.

Q Let me read this question and answer. Page 45 of Mr. Doty's examination before trial under February 2, 1972:

"Question: Did the partnership discuss at any time in 1970 the commercial paper activity of Goldman, Sachs & Co., and without accepting the limitation imposed by your counsel, you may for the moment confine yourself, if it is in the post-June 21st period, to facts and events as they existed prior to June 21, 1970."

I am omitting the colloquy.

"Answer: Prior to June 21, the partnership had no such discussions."

A That would be right.

Q Did the commercial paper department make money in 1968?

A Yes, it did.

Q Did the commercial paper department make money in 1969?

A Yes. I think it did.

Q That's your best recollection?

A Yes.

Q Did the commercial paper department make money in 1970?

A I think it made money in all years. I'd have to look at the figures, but it has been a money maker, yes.

Q Did you give a "yes" answer to those three questions at Page 57 of your examination before trial?

A I probably gave the same answer I now gave.

Q Page 57.

A Yes, probably.

Q Mr. Doty, with regard to commercial paper, would you say that Goldman, Sachs & Co. as of 1967 was issuer oriented?

THE COURT: What does that mean?

Q It is true that Goldman, Sachs, during these periods was purchasing commercial paper for inventory, 1967 through '70, through June 21st?

THE COURT: You mean the reason they purchased the paper was for inventory or that they were unable to sell it and it therefore ended up in their inventory?

MR. STITT: Your Honor, let me withdraw the question.

Q It is true that during these years, '67 through, say, April 1, 1970, or June 21st, Goldman, Sachs was purchasing and taking into inventory paper of issuing customers for which it was the dealer?

A Yes.

Q In doing so, was Goldman, Sachs assuming a market risk with respect to such paper?

A Sure.

Q And was it considered by anyone in the firm or who worked for the firm that this was an approach believed to be best for both the borrower and the lender?

MR. PIEL: Objection, your Honor, irrelevant, whether somebody in the firm might have had some opinion.

THE COURT: Sustained.

MR. STITT: Your Honor, I would have no further questions of Mr. Doty.

THE COURT: Any redirect?

MR. PIEL: Just one question.

REDIRECT EXAMINATION

BY MR. PIEL:

Q Mr. Doty, you mentioned that there was about a month's lag when you left the Lybrand firm and came over to Goldman, Sachs before you became a partner while they rewrote the partnership agreement.

A Yes, sir.

Q Is there some language in that agreement that refers to the partners entrusting the general direction of the business of the firm to the management committee?

MR. STITT: I object to the form of this question, your Honor.

THE COURT: Sustained.

Q Does the management committee have the general direction of the business and affairs of the firm?

A In practice?

Q In practice.

A It does.

Q And in fact?

A Yes.

Q And on occasion makes decisions of policy or action which it later reports to the membership as a whole?

A Yes.

Q Your monthly meetings of partners is mainly to exchange reports of the various departments and keep everyone informed?

MR. STITT: I object to the form of that question.

THE COURT: Overruled.

A Yes.

MR. PIEL: Thank you.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will adjourn until tomorrow morning at 10:00 o'clock.

MR. STITT: Your Honor, I would like to inform the Court now and my adversary that in view of Mr. Van Cleave's testimony this morning, I do not intend to call Mr. Kaufman, so perhaps he might be notified that he need not come here at 10:00 o'clock. I would ask who my adversary expects to call tomorrow. I gather Mr. Vogel will be produced.

Might I inquire --

MR. PIEL: You are now then resting in all respects?

MR. STITT: I have two caveats on that. We have the Bevan deposition which has been designated -- originally he was listed as a live witness by the defendnats, and I have to put in my counterdesignations, and we discussed with Mr. Piel's associates this morning giving us the type of copy that we could use to put in our designations, I would certainly be able to do that over the weekend. I certainly want that to be part of my case.

I have some other-- in addition, your Honor, Mr. Piel requested me, I think, perhaps off the record, to produce the original commercial paper note, Exhibit 89.

MR. PIEL: I withdraw the request.

MR. STITT: I would like leave to see if I could find it, your Honor, and bring that into court.

THE COURT: It doesn't make any difference whether it is facsimile or original.

MR. STITT: There might be a very remote jurisdictional significance if it were actually written by hand by

LHd165

Mr. Shaffer, if he put his signature in it while he was at Philadelphia dn it was then sent here to New York. I just don't know the answer to that, but out of an abundance of caution --

THE COURT: The paper was meaningless until it was authenticated by Morgan Guaranty. I gather it was held for safekeeping by Morgan and only became a valuable piece of paper when they countersigned it.

MR. PIEL: Really, even if there were a handwritten signature on there, that wouldn't prove where Mr. Shaffer signed it any way. He might have come up to New York for the day to do a lot of signing.

MR. STITT: My adversary brought it up. I would ask leave most respectfully to see if I could come up with that note.

MR. PIEL: I consent to his adding that physical piece of paper to his case at any time. I am not objecting to that.

Also, Mr. Stitt's case is open in one respect, one other respect that I can think of, if I may assist him in this regard, and that is that he was holding a document for Mr. Lepley, and, of course, that will be on his case.

Subject to that, I take it, Mr. Stitt is now resting, because the Bevan testimony comes in on our case, not his case. He was neither calling nor designating Bevan. Bevan was to be our witness, and as we find that he is more than 100 miles from the courthouse, we have designated on our case his deposition testimony. This is a transcript which did not have line numbers, so we couldn't designate it by page and line. Instead we have designated it physically by drawing brackets on the sides of the portions we are offering.

I now respectfully offer those portions of the Bevan deposition on defendants' case.

MR. STITT: Your Honor, I would respectfully offer the counterdesignations that I expect to make when I have this document from my adversary in shape for me to make these deisngations, which I gather will be in a couple of minutes or tomorrow, and I should have that ready to be submitted Monday morning.

MR. PIEL: For the record, your Honor, it is David C. Bevan, B-e-v-a-n, deposition taken May 30, 1973, in re Penn Central commercial paper litigation, consolidated docket.

MR. STITT: I would again ask whom I may expect to be confronted with after Mr. Vogel tomorrow.

MR. PIEL: It will be Mr. Vogel, I am quite sure, all day. I think he is a full day witness.

MR. STITT: Who would you expect to call after that, Mr. Piel?

MR. PIEL: My present expectation after that, my best advice from my coaches is that it will be Mr. Vogel in the morning and we hope to finish with him in the morning or early afternoon, and we look for Mr. Stitt's accommodation on a nice, snappy, short cross-examination, so we can also get rid of two more witnesses tomorrow, they will be shorter witnesses. One of them is Mr. Lepely, who is now under subpoena to come in here from Philadelphia, we have got him within 100 miles, and the other is Mr. Sullivan, an officer of the Chemical Bank. I think those will be the three witnesses tomorrow.

MR. STITT: I do not believe that I could represent that my cross-examination of Mr. Vogel would be a brief cross-examination. Depending on how things go, and I don't seek to try to run this court, but perhaps your Honor might want to consider, if there are out of town witnesses who are going to be here, that we might interrupt Mr. Vogel's testimony --

THE COURT: What are you worrying about the defendants' presentation for?

MR. STITT: I am not, your Honor, but he mentioned that these are men who were coming in from out of town.

THE COURT: He knows how to present his case. You say you have Vogel tomorrow. It may be all day. You pressed him for the name of the next witness. He didn't volunteer it. He says the next witness will be Lepley.

MR. PIEL: I misspoke about Mr. Sullivan. He is from Manufacturers Hanover, not from Chemical.

THE COURT: I am not sure how that cuts with Mr. Sullivan, whether he feels flattered or not, but I don't know the difference between the two.

MR. PIEL: We have three or four Sullivans in our firm, so I hope his feelings are not hurt.

THE COURT: You have asked and you have been answered.

See you tomorrow morning, 10:00 o'clock.

(Court adjourned.)

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